(18,472.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 619.

J. W. ALLEN, COMPTROLLER OF THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

PULLMAN'S PALACE CAR COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the middle district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, in a suit between Pullman's Palace Car Company, plaintiff, and J. W. ——, comptroller of the State of Tennessee, being three cases consolidated upon hearing, viz., Nos. 2866, 2867, and 2903, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of
b such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said J. W. Allen, comptroller, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of March, in the year of our Lord one thousand nine hundred and two.

H. M. DOAK,
Clerk of the Circuit Court of the United States
for the Middle District of Tennessee.

[Seal Circuit Court U. S., Middle District Tenn.]

Allowed by—

HORACE H. LURTON,
Judge of the Circuit Court of the United States
for the Middle District of Tennessee.

1 At a regular term of the circuit court of the United States begun and holden for the middle district of Tennessee, in the sixth judicial circuit, at Nashville, in said district, upon the third Monday of October, 1901, present and presiding the Hon. Chas. D. Clark, judge, etc., the following among other proceedings were had, to wit:

The following causes came on for hearing before the Hon. C. D. Clark, judge, etc., during said term, upon the supplied pleadings, stipulation waiving jury, order of consolidation of said causes for hearing, proof and argument of counsel, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867. Law.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866. Law.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903. Law.

The following bill of exceptions was signed, sealed and filed, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

and

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

On the trial of these causes the following stipulations and evidence and agreements were given in evidence, viz:

In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller. } No. 2866. Law.

Stipulation.

The declaration and pleas in the above-entitled cause have been lost and it is hereby stipulated that the attached papers are true

copies of said declaration and pleas and may be used with
2 like effect as the originals.

JNO. S. RUNNELLS,
WM. BURRY,
WM. L. GRANBERY,
Attorneys for Plaintiff.
VERTREES & VERTREES,
Attorneys for Defendant.

UNITED STATES OF AMERICA, } *ss:*
Middle District of Tennessee, }

In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1891.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the Treasury of the State of Tennessee. } No. 2866. Law.

Pullman's Palace Car Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, sues J. W. Allen, comptroller of the treasury of the State of Tennessee, a citizen of the State of Tennessee, and a resident of the middle district of Tennessee, for $20,000.00, as damages and for cause of action says:

That the domicile, place of business and principal office of Pullman's Palace Car Company, plaintiff herein, is in the city of Chicago, in the county of Cook and State of Illinois, where it is engaged in manufacturing sleeping and parlor cars, and by contracts with railroad companies throughout the United States of America, Canada and Mexico, furnishing such cars for use in operating long, continuous, connecting lines of railroad, extending interstate, and between foreign nations; that it retains the possession of such cars and receives certain compensation from railroad passengers who may desire to use the seats and sleeping berths in said cars; and in manufacturing all other kinds of railroad cars and street cars and in doing various other kinds of manufacturing business.

That it is a corporation foreign to the State of Tennessee and is not a citizen of that State; that it is engaged exclusively in the business of interstate commerce in the State of Tennessee and in no other business whatever in that State; that all of its sleeping and parlor cars running into, or into and through the State of Tennessee, are vehicles of interstate commerce; that it has never sent any of
such cars into the State of Tennessee for the purpose of con-
3 ducting or carrying on any business local to that State, or for permanent use therein; that all of such cars running into, or into and through the State of Tennessee, have been heretofore and are now run into, or into and through that State under that comity between the States which is guaranteed by the Constitution of the United States, conferring upon Congress the power * * * "to

regulate commerce with foreign nations and between the several States."

That heretofore and prior to the first day of January, 1887, plaintiff entered into certain separate contracts with certain railroad companies, owning long, continuous, connecting lines of railroad extending from other States and Territories of the United States into and through the State of Tennessee, each of said lines of railroad also connecting with other railroad lines running through many of the States and Territories of the United States and into foreign countries; that in and by the terms of such contracts, plaintiff agreed with said railroad companies to furnish sleeping and parlor cars for use in operating their respective lines of railroad, sufficient in number to meet the requirements of travel upon and over the lines of said railroads, and to furnish with each of said cars one or more employés, whose duty it shall be to collect fares for the extra accommodations furnished therein, and generally to provide for the comfort of passengers in said cars, all of which contracts or continuations thereof are still in force.

That in and by each of said contracts the said railroad companies agreed to haul such sleeping and parlor cars on their respective lines of road, and at their own expense to furnish fuel for said cars, to light, wash and clean the same, and to permit the plaintiff herein to collect its usual charges from the railroad companies' passengers, who might desire to use the extra accommodations provided by the plaintiff to place its tickets in the hands of said railroad companies' ticket agents, at their railroad ticket offices, for sale to such railroad passengers as shall desire to use the extra accommodations provided, as aforesaid, without charge to the plaintiff, the proceeds of such sales, however, to be at the risk of and to enure wholly to the use and benefit of the plaintiff herein; and the plaintiff reserved the right to retain the possession and control and management of the inside of said sleeping and parlor cars and to sell to such railroad passengers as should desire it, the use of seats and sleeping berths in said cars and to collect fares for the extra accommodation furnished in said cars. All of which things, together with other provisions of said contracts not material to this cause will fully appear by reference to said original contracts now in the possession of the plaintiff and ready to be produced as this court shall direct; and it attaches to this declaration as Exhibit "A" a copy of one of such contracts and avers that all the other of said contracts are in substance similar thereto.

4

That its capital stock represents all of its real, personal, tangible and intangible property, including all of its sleeping and parlor cars and including all of the sleeping and parlor cars used upon the lines of railroads in the State of Tennessee.

That by section 5 of the general revenue acts of the State of Tennessee for the year 1889, approved April 8th, 1889, it is provided:

"The following corporations shall pay directly to the comptroller's office the following taxes: * * *

Sleeping car companies.

(In lieu of all other taxes except ad valorem tax.)

Each company doing business in this State, for one or more passengers taken up at one point in this State and delivered at another point in this State and transported wholly within this State, per annum, $3,000.00."

That the said section 5 of the general revenue acts of the State of Tennessee, approved April 8th, 1889, for raising revenue for the years 1889 and 1890 is illegal, unconstitutional and void, because it discriminates in favor of railroad companies, in that it imposes a tax upon the property and business of sleeping car companies only and exempts from such tax railroad companies using and operating their own sleeping cars within the State and that it is in violation of section 28, article II of the constitution of the State of Tennessee, which provides that: "All property shall be taxed according to its value * * * so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value," and that it is violation of the provisions of the Constitution of the United States, being a tax upon the vehicles engaged in, and the business of, interstate commerce.

That it never had any domicile or principal place of business in the State of Tennessee; that it owns in whole or in part, manages and operates more than 2,200 sleeping and parlor cars running into every State and Territory in the United States and into Canada and Mexico; that its only domicile and principal place of business for conducting the operation of all such cars is in the city of Chicago, in the county of Cook and State of Illinois as aforesaid; its principal officers reside there; its moneys earned all over the United States, Canada and Mexico are remitted there as soon as possible in the course of business; that no special cars belonging to it are, at all times, used in the State of Tennessee; but its sleeping and parlor cars are constantly changing from road to road to meet the demands and emergencies of business and traffic, and sleeping and parlor cars at one time running in the State of Tennessee, are at other times transferred to railroads in other States and Territories of the United States and foreign countries, and other sleeping and parlor cars belonging to it are run in their places.

That none of its sleeping and parlor cars are or ever have been taken into the State of Tennessee for the purpose of doing any business *lo* local to that State, or for permanent or continuous use therein, but solely in pursuance of the business of interstate commerce, in which it is engaged, as heretofore stated, and, therefore, such cars have no taxable situs in the State of Tennessee; that plaintiff is each year assessed and taxed at its domicile and principal place of business in said county of Cook and State of Illinois upon its tangible property and upon its capital stock, and that it has been so assessed and taxed for the years 1889 and 1890 in the county and State aforesaid, upon its tangible property and upon its capital

stock; that it is engaged solely and exclusively in the business of interstate commerce in the State of Tennessee and in no other business whatever, and is, therefore, under the protection of the Constitution of the United States, conferring upon Congress the power * * * "to regulate commerce with foreign nations and among the several States," and that the State of Tennessee has no power or authority to impose any tax or license upon said cars or prohibit the plaintiff from running said cars into and through the State of Tennessee in the prosecution of its said business of interstate commerce.

That the defendant, J. W. Allen, comptroller of the treasury of the State of Tennessee, acting under said section 5 of the general revenue acts of the State of Tennessee, approved April 8, 1889, did, in his official capacity as said comptroller, on the 28th day of August, A. D., 1891, issue his warrant, and place, or cause the same to be placed in the hands of W. J. Hill, sheriff of Davidson county, Tennessee, reciting that Pullman's Palace Car Company, plaintiff herein, was liable under section 5 of the general revenue acts of 1889, for certain taxes, to wit, the sum of $3,000.00 per year for each of the years from April 8, 1889, to April 8, 1892, being
6 three years, and making a total of $9,000.00 of principal with $745.50 interest thereon, making an aggregate of $9,745.50 and commanding said sheriff to distrain of the goods, chattels and property of this plaintiff sufficient in amount and value to make, by the sale thereof, the said sum of $9,745.50, with all necessary costs, charges, etc., and after due advertising, to sell the same, etc., and that, acting under said warrant and command, the said sheriff did distrain and levy upon the sleeping car "Bartholdi," property of the plaintiff herein, which was then temporarily lying at the union depot in the city of Nashville, in the State of Tennessee, said car having arrived in Nashville on the morning of the said 28th day of August, A. D. 1891, from the city of Atlanta, in the State of Georgia, and was due to leave Nashville the same evening for Memphis, in the State of Tennessee, said car being engaged in the business of interstate commerce. And thereupon Pullman's Palace Car Company, plaintiff herein, protesting that the said law, embraced in said section 5 of the general revenue acts of the State of Tennessee, approved April 8, 1889, was null and void and in violation of the constitution of the State of Tennessee and of the Constitution of the United States, because plaintiff was engaged in the business of interstate commerce and in no other business within the State of Tennessee and the said tax was a tax levied by the State of Tennessee upon the plaintiff's cars used in the business of interstate commerce and for the privilege of conducting and carrying on its business of interstate commerce within the State of Tennessee and that plaintiff entered the State only for the purpose of carrying on its business of interstate commerce; that its sleeping and parlor cars running into, or into and through and out of the State of Tennessee, in the conduct of its said business of interstate commerce, had no domicile within the State of Tennessee; were not taken into Tennessee for the purpose of carrying on any business local to that State; that all of its said

cars were engaged exclusively in the business of interstate commerce and did not have any situs within the State of Tennessee and that neither the plaintiff nor any of its cars were subject to the jurisdiction of the State of Tennessee for the purpose of assessment and taxation, under compulsion of said warrant in the hands of said sheriff and in order to prevent the sale of said "Bartholdi," the interruption of its interstate-commerce business and a violation of its said contract with the railroad company "to furnish cars, etc," was
7 forced to pay to the said comptroller the said sum of $9,745.50, the said taxes so illegally demanded and exacted from it and the plaintiff, on the same date, last aforesaid, did pay said taxes, under protest, within the meaning and intent of the statute of the State of Tennessee and is entitled to recover the same from the said comptroller.

Wherefore plaintiff sues for twenty thousand dollars as damages.

JOHN S. RUNNULLS,
WM. BURRY,
WM. L. GRANBERY,
Attorneys for Plaintiff.

Summons issued Sept. 26, 1891.
Declaration filed Oct. 12, 1891.

UNITED STATES OF AMERICA,
Middle District of Tennessee.

In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1891.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866. Law.

The defendant comes by attorney and for plea says: he does not owe the plaintiff the sum averred in plaintiff's declaration, or any part thereof, on account of taxes illegally exacted and collected of the plaintiff, and of this he puts himself upon the country.

And defendant gives notice that under this plea he will rely upon the following denials and defenses, to wit:

First.

He denies that he owes any part of the sum sued for.

Second.

He admits that the Tennessee statutes did, during the years, 1889, 1890, 1891, and 1892, impose upon sleeping car companies doing business in the State, a license tax of $3,000.00 per annum.

He denies that said statute violates any constitutional provision State or Federal. He denies that the statute imposes or was intended to impose any tax upon the interstate business of such companies, but wholly and alone upon their local and internal business.

He denies that plaintiff did, during said years, do exclusively interstate business within this State and avers that, on the contrary, it did a large local business thereby rendering itself liable for said tax.

He denies that plaintiff had no office in Tennessee, if that fact be material.

8 He denies that all of plaintiff's cars are interstate, but avers that many of its cars run locally within the State and many others, *tho* though running interstate, engage in local internal business.

He denies the alleged contracts between plaintiff and the various railway companies.

He denies that plaintiff pays taxes upon its property used in Tennessee, in any other States, if that be material.

He avers that plaintiff has endeavored to evade the tax laws of this State by the method of running its cars and by intermingling its internal and interstate business, pretending to do interstate, while in facts engaged in internal business.

G. W. PICKLE,
Attorney General for the State of Tennessee.

Plea filed October 23d, 1893.

9 In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1891.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller, etc. } No. 2867. Law.

Stipulation.

The declaration and pleas in the above-entitled cause have been lost and it is hereby stipulated that the attached papers are true copies of said declaration and pleas and may be used with like effect as the originals.

JNO. S. RUNNELLS,
WM. BURRY,
WM. L. GRANBERY,
Attorneys for Plaintiff.
VERTREES & VERTREES,
Attorneys for Defendant.

UNITED STATES OF AMERICA, *Middle District of Tennessee*, } ss:

In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1891.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the Treasury of the State of Tennessee. } Law. No. 2867.

Pullman's Palace Car Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, sues J. W. Allen, comptroller of the treasury of the State of Tennessee, a citizen of the State of Tennessee, and a resident of the middle district of Tennessee for $10,000.00 as damages, and for cause of action says:

That the domicile, place of business and principal office of Pullman's Palace Car Company, plaintiff herein, is in the city of Chicago, in the county of Cook and State of Illinois, where it is engaged in manufacturing sleeping and parlor cars and by contracts with railroad companies throughout the United States of America, Canada and Mexico, furnishing such cars for use in operating long, continuous, connecting lines of railroad extending interstate and between foreign nations, that it retains the possession of such cars and receives certain compensation from railroad passengers who may desire to use the seats and sleeping berths in said cars; and in manufacturing all other kinds of railroad cars and street cars and in doing various other kinds of manufacturing business.

That it is a corporation foreign to the State of Tennessee and is not a citizen of the State; that it is engaged exclusively in the business of interstate commerce in the State of Tennessee and in no other business whatever in that State; that all of its sleeping and parlor cars running into, or into and through the State of Tennessee are vehicles of interstate commerce; that it has never sent any of
10 such cars into the State of Tennessee for the purpose of conducting or carrying on any business local to that State, or for permanent use therein; that all of said cars running into, or into and through the State of Tennessee, have been heretofore and are now, run into, or into and through that State under that comity between the States which is guaranteed by the Constitution of the United States, conferring upon Congress the power "to regulate commerce with foreign nations and among the several States."

Thate heretofore and prior to January, 1887, plaintiff entered into certain separate contracts with certain railroad companies, owning long, continuous, connecting lines of railroad extending from other States and Territories of the United States into, or into and through the State of Tennessee, each of said lines of railroad also connecting with other railroad lines running through many of the States and Territories of the United States and into foreign countries; that in and by the terms of such contracts, plaintiff agreed with said rail-

road companies to furnish sleeping and parlor cars for use in operating their respective lines of railroad, sufficient in number to meet the requirements of travel upon and over the lines of said railroads and to furnish with each of said cars one or more employees, whose duty it shall be to collect fares for the extra accommodations furnished therein and generally to provide for the comfort of passengers in said cars, all of which contracts or continuations thereof are still in force.

That, in and by each of said contracts the said railroad companies agreed to haul such sleeping and parlor cars on their respective lines of road, and, at their own expense to furnish fuel for said cars, to light, wash, and clean the same, and to permit the plaintiff herein to collect its usual charges from the railroad companies' passengers, who might desire to use the extra accommodations provided by the plaintiff in such sleeping and parlor cars; and to permit the plaintiff to place its tickets in the hands of the said railroad companies' ticket agents, at their railroad ticket office, for sale to such railroad passengers as shall desire to use the extra accommodations provided, as aforesaid, with charge to the plaintiff, the proceeds of such sales however, to be at the risk of and enure wholly to the use and benefit of the plaintiff herein; and the plaintiff reserved the right to retain the possession and control and management of the inside of said sleeping and parlor cars and to sell to such railroad passengers as should desire it the use of *of* seats and sleeping berths in said
11 cars and to collect fares for the extra accommodations furnished in said cars. All of which things, together with other provisions of said contracts not material to this cause, will fully appear by reference to said original contracts now in the possession of the plaintiff and ready to be produced as this court shall direct; and it attaches to this declaration, as Exhibit "A," a copy of one of such contracts and avers that all the other of said contracts are in substance similar thereto.

That its capital stock represents all of its real, personal, tangible and intangible property, including all of its sleeping and parlor cars and including all of the sleeping and parlor cars used upon the lines of railroad in the State of Tennessee.

That, by section 5 of the general revenue acts of the State of Tennessee for the year 1887, approved March 29th, 1887, it is provided that: "Sleeping car companies.—Each company doing business in the State, on each car per annum, $500."

That the said section 5 of the general revenue acts of the State of Tennessee approved March 29th 1887, for raising revenue for the years 1887 and 1888 — is illegal, unconstitutional and void, because it discriminates in favor of railroad companies, in that it imposes a tax upon the property and business of sleeping car companies only, and exempts from such tax railroad companies using and operating their own sleeping cars within the State and that it is in violation of section 28 of article 2 of the constitution of the State of Tennessee, which provides that: "All property shall be taxed according to its value, * * * so that taxes shall be equal and uniform throughout the State. No one species of property from which

a tax may be collected shall be taxed higher than any other species of property of the same value," and that it is in violation of the provisions of the Constitution of the United States, being a tax upon vehicles engaged in and the business of interstate commerce.

That it never had any domicile or principal place of business
12 in the State of Tennessee; that it owns in whole or in part, manages and operates more than 2200 sleeping and parlor cars, running into every State and Territory of the United States and into Canada and Mexico; that its only domicile and principal place of business for conducting the operation of all such cars is in the city of Chicago, in the county of Cook and State of Illinois as aforesaid; its principal officers reside there; its records are there; its moneys earned all over the United States, Canada and Mexico are remitted there as soon as possible in the course of business; that no special cars belonging to it are, at all times, used in the State of Tennessee; but its sleeping and parlor cars are constantly changing from road to road to meet the demands and emergencies of business and traffic and sleeping and parlor cars at one time running in the State of Tennessee are at other times transferred to railroads in other States and Territories of the United States and foreign countries and other sleeping cars and parlor cars belonging to it are run in their places.

That none of its sleeping and parlor cars are or ever have been taken into the State of Tennessee for the purpose of doing any business local to that State, or for permanent or continuous use therein, but solely in pursuance of the business of interstate commerce, in which it is engaged as hereinbefore stated, and therefore, such cars have no taxable situs in the State of Tennessee; that plaintiff is each year assessed and taxed at its domicile and principal place of business in the said county of Cook and State of Illinois upon its tangible property and upon its capital stock, and that it has been so assessed and taxed for *for* the year- 1892, 1887, and 1888, in the county and State aforesaid upon its tangible property, and upon its capital stock; that it is engaged solely and exclusively in the business of interstate commerce in the State of Tennessee, and in no other business whatever, and is, therefore, under the protection of the Constitution of the United States conferring upon Congress the power "to regulate commerce with foreign nations and among the several States," and that the State of Tennessee has no power or authority to impose any tax or license upon said cars or prohibit the plaintiff from running said cars into, or into and through the State of Tennessee in the prosecution of its said business of interstate commerce.

13 That the sum of $500.00 per car is an unjust, oppressive and ex*h*orbitant tax, even if the State had the legal right to impose any tax. That heretofore the State of Tennessee imposed a tax of $50.00 per car, to be levied on each car running into, or into and through the State of Tennessee, and that when the courts of the United States held that the State of Tennessee could not tax or license cars engaged in interstate commerce, the officers and the legislature of that State, believing that two of plaintiff's cars, which were

at one time operated locally within the State of Tennessee, in connection with and as a part of its general business of interstate commerce, could be taxed or licensed by the State, increased the rate of taxation from $50.00 per car to $500.00 per car, intending thereby to derive from said two cars an amount of tax equal to what the State would have realized on all cars running into or through the State at the rate of $50.00 per car and by this means to evade and defeat the effect of the decisions of the courts of the United States.

That the defendant, J. W. Allen, comptroller of the treasury of the State of Tennessee, acting under said section 5 of the general revenue acts of the State of Tennessee, approved March 29th, 1887, did, in his official capacity as said comptroller on the 28th day of August, 1891, issue his warrant and place, or cause the same to be placed in the hands of W. J. Hill, sheriff of Davidson county, Tennessee, reciting that Pullman's Palace Car Company, plaintiff herein, was liable under section 5 of the general revenue acts of 1887, for certain taxes, to wit, for taxes on two cars alleged to have been run locally, in the years 1887, and 1888, within the State of Tennessee, between Nashville and Memphis, $2468.32; for taxes on two cars alleged to have been run locally in the years 1887 and 1888, within the State of Tennessee, between Nashville and Chattanooga, $2468.32, for taxes on one car for the years 1887 and 1888, as the proportion due *the* to the State of Tennessee on all cars running through that State and cars running from other States into the State of Tennessee, or from within the State of Tennessee out of it and into other States $1234.16, making a total of 6170.80, and commanding said sheriff to distrain of the goods, chattels and property of this plaintiff sufficient in amount and value to make, by the sale thereof, the said sum of $6170.80, with all necessary charges, costs, *charges*, etc. and, after due advertisement, to sell the same, etc., and that acting under said warrant and command of said sherif- did distrain and levy upon the sleeping car "Bartholdi," the property of the plaintiff herein which

14 *which* was then temporarily lying at the union depot in the city of Nashville, in the State of Tennessee, said car having arrived in Nashville on the morning of said 28th day of August, A. D. 1891, from the city of Atlanta, in the State of Georgia, and was due to leave Nashville the same evening for Memphis in the State of Tennessee, said car being engaged in the business of interstate commerce, and thereupon Pullman's Palace Car Company, plaintiff herein, protesting that the said law, embraced in said section 5 of the general revenue acts of the State of Tennessee, approved March 29th, 1897, was null and void and in violation of the constitution of the State of Tennessee and of the Constitution of the United States, because the plaintiff was engaged in the business of interstate commerce, and in no other business within the State of Tennessee, and the said tax was a tax levied by the State of Tennessee upon the plaintiff's cars used in the business of interstate commerce, and for the privielege of conducting and carrying on its business of interstate commerce within the State of Tennessee, and that plaintiff entered the State only for the purpose of carrying on its business of interstate commerce; that its sleeping and parlor cars running into, or into,

through and out of the State of Tennessee, in the conduct of its said business of interstate commerce, had no domicile within the State of Tennessee; were not taken into Tennessee for the purpose of carrying on any business local to that State; that all of its said cars were engaged exclusively in the business of interstate commerce, and did not have any situs within the State of Tennessee and that neither the plaintiff nor any of its cars were subject to the jurisdiction of the State of Tennessee for the purpose of assessment and taxation, under compulsion of said warrant in the hands of said sheriff, and in order to prevent the sale of said car, "Bartholdi," the interruption of its interstate-commerce business and a violation of its contract with the railroad company "to furnish cars, etc.," was forced to pay to the said comptroller the said sum of $6170.80, the said taxes so illegally demanded and exacted from it and the plaintiff, on the date last aforesaid, did pay said taxes under protest, within the meaning and intent of the statute of the State of Tennessee and is entitled to recover the same from the said comptroller.

Wherefore plaintiff sues for $10,000.00 as damages.

JNO. S. RUNNELLS,
WM. BURRY,
WM. L. GRANBERY,
Attorneys for Plaintiff.

Summons issued Sept. 26, 1891.
Declaration filed Oct. 19, 1891.

UNITED STATES OF AMERICA, }
Middle District of Tennessee. }

15 In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1891.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867. Law.

The defendant comes by his attorney and for plea says that he does not owe the *the* plaintiff the sum of $6170.80, sued for or any part thereof, on account of taxes illegally exacted or collected of the plaintiff as averred in its declaration, or on any other account, and of this he puts himself upon the country.

And the defendant gives notice that he will under this plea rely upon the following denials and defenses, to wit:

First.

He denies that said sum of $6170.80, or any part of it, was paid to defendant in manner and form as averred in the declaration.

Second.

He admits that the laws of the State of Tennessee for the years 1887 and 1888 imposed upon "sleeping car companies" a license tax of $500.00 per annum on each car, but he denies that this stat-

ute is in conflict with either the State or Federal Constitution. He denies that it imposes any tax upon interstate business of such companies and avers that plaintiff's cars were, in and during the years 1887 and 1888, engaged exclusively within the State of Tennessee, in interstate business, but avers, on the contrary, that some of its cars, sleeping and parlor, were employed exclusively in internal business within the State and many other of its cars were employed in both internal and interstate business and *and* that plaintiff is liable for the internal business done by the one or the other class of cars.

He denies that all of plaintiff's cars ran interstate during said years, but avers, on the contrary, that some of them were employed regularly on local roads within the State, and he avers that if they were changed and run interstate at all, that it was done for the fraudulent purpose of defeating the operation of the tax laws of the State and was in fact and reality but fraudulently and colorably done.

He denies that plaintiff has no principal office in Tennessee, if that averment be material.

He denies that plaintiff pays taxes in the State of Illinois upon its cars employed in Tennessee, but insists this fact is not material.

He denies that plaintiff's cars are without any situs in
16 Tennessee but this fact is not material.

He denies that the laws passed for the purpose of taxing sleeping cars companies in Tennessee were intended to evade the Constitution and laws of the United States, but this is not material.

He avers that said laws were passed, as were other like statutes, to raise revenue to meet the State's obligations and to require plaintiff and other like companies to contribute its share of the necessary burdens of taxation.

He denies the alleged contracts between the various railway companies as averred in the declaration.

He denies that the tax imposed is unjust or oppressive, but avers, on the contrary, that many of the local interests of the State are far more heavily burdened by the same laws.

G. W. PICKLE,
Attorney General for State of Tennessee.

Plea filed October 23d, 1893.

17 In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller, etc. } No. 2903. Law.

Stipulation.

The declaration and pleas in the above-entitled cause have been lost and it is hereby stipulated that the attached papers are true

copies of said declaration and pleas and may be used with like effect as the originals.

JNO. S. RUNNELLS,
WM. BURRY,
WM. L. GRANBERY,
Attorneys for Plaintiff.
VERTREES & VERTREES,
Attorneys for Defendant.

UNITED STATES OF AMERICA,
Middle District of Tennessee, } *ss:*

In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1891.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the Treasury of the State of Tennessee. } Law. No. 2903.

Pullman's Palace Car Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, sues J. W. Allen, comptroller of the treasury of the State of Tennessee, a citizen of the State of Tennessee, and a resident of the middle district of Tennessee for $10,000.00 as damages, and for cause of action says:

That the domicile, place of business and principal office of Pullman's Palace Car Company, plaintiff herein, is in the city of Chicago, in the county of Cook and State of Illinois, where it is engaged in manufacturing sleeping and parlor cars and by contracts with railroad companies throughout the United States of America, Canada and Mexico, furnishing such cars for use in operating long, continuous, connecting lines of railroad extending interstate and between foreign nations, that it retains the possession of such cars and receives certain compensation from railroad passengers who may desire to use the seats and sleeping berths in said cars; and in manufacturing all other kinds of railroad cars and street cars and in doing various other kinds of manufacturing business.

That it is a corporation foreign to the State of Tennessee and is not a citizen of the State; that it is engaged exclusively in the business of interstate commerce in the State of Tennessee and in no other business whatever in that State; that all of its sleeping and parlor cars running into, or into and through the State of Tennessee are vehicles of interstate commerce; that it has never sent any of such
18 cars into the State of Tennessee for the purpose of conducting or carrying on any business local to that State, or for permanent use therein; that all of said cars running into, or into and through the State of Tennessee, have been heretofore and are now, run into, or into and through that State under that comity between the States which is guaranteed by the Constitution of the United States, conferring upon Congress the power "to regulate commerce with foreign nations and among the several States."

That heretofore and prior to January, 1887, plaintiff entered into certain separate contracts with certain railroad companies, owning long, continuous, connecting lines of railroad extending from other States and Territories of the United States into, or into and through the State of Tennessee, each of said lines of railroad also connecting with other railroad lines running through many of the States and Territories of the United States and into foreign countries; that in and by the terms of such contracts, plaintiff agreed with said railroad companies to furnish sleeping and parlor cars for use in operating their respective lines of railroad, sufficient in number to meet the requirements of travel upon and over the lines of said railroads and to furnish with each of said cars one or more employees, whose duty it shall be to collect fares for the extra accommodations furnished therein and generally to provide for the comfort of passengers in said cars, all of which contracts or continuations thereof are still in force.

That, in and by each of said contracts the said railroad companies agreed to haul such sleeping and parlor cars on their respective lines of road, and, at their own expense to furnish fuel for said cars, to light, wash, and clean the same, and to permit the plaintiff herein to collect its usual charges from the railroad companies' passengers, who might desire to use the extra accommodations provided by the plaintiff in such sleeping and parlor cars; and to permit the plaintiff to place its tickets in the hands of the said railroad companies' ticket agents, at their railroad ticket office, for sale to such railroad passengers as shall desire to use the extra accommodations provided, as aforesaid, with charge to the plaintiff, the proceeds of such sales, however, to be at the risk of and enure wholly to the use and benefit of the plaintiff herein; and the plaintiff reserved the right to retain the possession and control and management of the inside of said

19 cleeping and parlor cars and to sell to such railroad passengers as should desire it the use of *of* seats and sleeping berths in said cars and to collect fares for the extra accommodations furnished in said cars. All of which things, together with other provisions of said contracts not material to this cause, will fully appear by reference to said original contracts now in the possession of the plaintiff and ready to be produced as this court shall direct; and it attaches to this declaration, as Exhibit "A," a copy of one of such contracts and avers that all the other of said contracts are in substance si*l*milar thereto.

That its capital stock represents all of its real, personal, tangible and intangible property, including all of its sleeping and parlor cars and including all of the sleeping and parlor cars used upon the lines of railroad in the State of Tennessee.

That by section 5 of the general revenue acts of the State of Tennessee for the year 1889, approved April 8, 1889, is provided: "The following corporation shall pay directly to the comptroller's office the following taxes: * * *

Sleeping car companies.

(In lieu of all other taxes, except ad valorem tax.)

Each company doing business in this State, for one or more passengers taken up at one point in this State, and delivered at another point in this State and transported wholly within this State, per annum, * * * $3,000.00."

That the said section 5 of the general revenue acts of the State of Tennessee approved April 8, 1889, — , is illegal, unconstitutional and void, because it discriminates in favor of railroad companies, in that it imposes a tax upon the property and business of sleeping car companies only, and exempts from such tax railroad companies using and operating their own sleeping cars within the State and that it is in violation of section 28 of article 2 of the constitution of the State of Tennessee, which provides that: "All property shall be taxed according to its value, * * * so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value," and that it is in violation of the provisions of the Constitution of the United States, being a tax upon vehicles engaged in and the business of interstate commerce.

That it never had any domicile or principal place of business in the State of Tennessee; that it owns in whole or in part, manages and operates more than 2200 sleeping and parlor cars, running into every State and Territory of the United States and into Canada and Mexico; that its only domicile and principal place of business for conducting the operation of all such cars is in the city of Chicago, in the county of Cook and State of Illinois as aforesaid; its principal officers reside there; its records are there; its moneys earned all over the United States, Canada and Mexico are remitted there as soon as possible in the course of business; that no special cars belonging to it are, at all times, used in the State of Tennessee; but its sleeping and parlor cars are constantly changing from road to road to meet the demands and emergencies of business and traffic and sleeping and parlor cars at one time running in the State of Tennessee are at other times transferred to railroads in other States and Territories of the United States and foreign countries and other sleeping cars and parlor cars belonging to it are run in their places.

That none of its sleeping and parlor cars are or ever have been taken into the State of Tennessee for the purpose of doing any business local to that State, or for permanent or continuous use therein, but solely in pursuance of the business of interstate commerce, in which it is engaged as hereinbefore stated and, therefore, such cars have no taxable situs in the State of Tennessee; that plaintiff is each year assessed and taxed at its domicile and principal place of business in the said county of Cook and State of Illinois upon its tangible property and upon its capital stock and that it has been so assessed and taxed for *for* the year 1892, in the county and State afore-

said upon its tangible property and upon its capital stock; that it is engaged solely and exclusively in the business of interstate commerce in the State of Tennessee and in no other business whatever, and is, therefore, under the protection of the Constitution of the United States conferring upon Congress the power "to regulate commerce with foreign nations and among the several States," and that the State of Tennessee has no power or authority to impose any tax or license upon said cars or prohibit the plaintiff from running said cars into, or into and through the State of Tennessee in the prosecution of its ...d business of interstate commerce.

21 That the defendant, J. W. Allen, comptroller of the treasury of the State of Tennessee, acting under said revenue acts of the State of Tennessee, did, in his official capacity, as said comptroller, on the 3d day of May, 1892, issue his warrant, and place, or cause the same to be placed, in the hands of J. W. Hill, sheriff of Davidson county, Tennessee, reciting that Pullman's Palace Car Company, plaintiff herein, was liable under section 5 of the general revenue acts of the State of Tennessee of 1889, for certain taxes, to wit: the sum of $3,000.00 per year from April 8th, 1892 to April 8th, 1893; and commanding said sheriff to distrain of the goods, chattels, and property of this plaintiff sufficient in amount and value to make, by the sale thereof, the said sum of $3,000.00, with all necessary costs, charges, etc., and, after due advertising, to sell the same, etc., and that acting under said warrant and command said sheriff did distrain and levy upon the sleeping car "Bartholdi," the property of the plaintiff herein, which

22 *which* was then temporarily lying at the union depot in the city of Nashville, in the State of Tennessee, said car having arrived in Nashville on the morning of said 3d day of May, A. D. 1892, from the city of Atlanta, in the State of Georgia, and was due to leave Nashville the same evening for Memphis in the State of Tennessee, said car being engaged in the business of interstate commerce, and thereupon Pullman's Palace Car Company, plaintiff herein, protesting that the said law, embraced in said section 5 of the general revenue acts of the State of Tennessee, approved April 8, 1889, was null and void and in violation of the constitution of the State of Tennessee and of the Constitution of the United States, because the plaintiff was engaged in the business of interstate commerce, and in no other business within the State of Tennessee, and the said tax was a tax levied by the State of Tennessee upon the plaintiff's cars used in the business of interstate commerce, and for the privilege of conducting and carrying on its business of interstate commerce within the State of Tennessee, and that plaintiff entered the State only for the purpose of carrying on its business of interstate commerce; that its sleeping and parlor cars running into, or into, through and out of the State of Tennessee, in the conduct of its said business of interstate commerce, had no domicile within the State of Tennessee; were not taken into Tennessee for the purpose of carrying on any business local to that State; that all of its said cars were engaged exclusively in the business of interstate commerce, and did not have any situs within the State of Tennessee and

that neither the plaintiff nor any of its cars were subject to the jurisdiction of the State of Tennessee for the purpose of assessment and taxation, under compulsion of said warrant in the hands of said sheriff, and in order to prevent the sale of said car, "Bartholdi," the interruption of its interstate-commerce business and a violation of its contract with the railroad company "to furnish cars, etc.," was forced to pay to the said comptroller the said sum of $3000.00, the said taxes so illegally demanded and exacted from it and the plaintiff, on the date last aforesaid, did pay said taxes under protest, within the meaning and intent of the statute of the State of Tennessee, and is entitled to recover the same from the said comptroller.

Wherefore plaintiff sues for $10,000.00 as damages.

JNO. S. RUNNELLS,
WM. BURRY,
WM. L. GRANBERY,
Attorneys for Plaintiff.

Summons issued May 26, 1892.
Declaration filed May 29, 1892.

23 UNITED STATES OF AMERICA, }
Middle District of Tennessee. }

In the Circuit Court of the United States for the Middle District of Tennessee, October Term, 1893.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2913. Law.

The defendant comes by attorney and for plea says: He does not owe the plaintiff the sum averred in plaintiff's declaration or any part thereof, on account of taxes illegally executed and collected of the plaintiff, and of this he puts himself upon the country.

And defendant gives notice that under this plea, he will rely upon the following denials and defenses, to wit:

First.

He denies that he owes any part of the sum sued for.

Second.

He admits the Tennessee statutes did, during the years 1889, 1890, 1891, and 1892, impose upon sleeping car companies, doing business in the State a license tax of $3,000.00 per annum.

He denies that said statute violates any constitutional provision, State or Federal. He denies that the statute imposes or was intended to impose any tax upon the interstate business of such companies, but wholly and alone upon their local and internal business.

He denies that plaintiff did, during said years, do exclusively interstate business within this State, and avers that, on the contrary, it did a large local business, thereby rendering itself liable for such tax.

He denies that plaintiff has no office in Tennessee, if that fact be material.

He denies that all of plaintiff's cars are interstate, but avers that many of its cars run locally within the State, and many others, though running interstate, engage in local internal business.

He denies the alleged contracts between plaintiff and the various railway companies.

He denies that plaintiff pays taxes upon its property used in Tennessee, in any other States, if that be material.

He avers that plaintiff pays taxes upon its property used in Tennessee, in any other States, if that be material.

He avers that plaintiff has endeavored to evade the tax laws of this State by the method of running its cars and by intermingling its internal and interstate business, pretending to do inter-
24 state, while in fact engaged in internal business.

G. W. PICKLE,
Attorney General of State of Tennessee.

Plea filed Oct. 23, 1893.

25 The following stipulation was filed, viz:

United States Court for the Middle District of Tennessee.

PULLMAN PALACE CAR COMPANY *vs.* J. W. ALLEN, Comptroller, etc. } Numbers 2866, 2867, and 2903.

Stipulation.

In these causes it is stipulated that the following is true and may be used in evidence as facts admitted by both parties in the trial

First. During the years 1887, 1888, the plaintiff operated sleeping cars in the State of Tennessee as follows:

Each night a car left Nashville and went to Memphis, and on this car tickets were sold to passengers from Nashville to Memphis and not beyond. This car remained all day in Memphis, being cleaned there, and returned to Nashville the following night, going no further on a continuous trip. It remained all day in Nashville and was cleaned; and then, the following night, went from Nashville, Tennessee, via Chattanooga, to Atlanta, Georgia. It remained all day in Atlanta, was cleaned there, and, then, the following night, returned from Atlanta to Memphis.

On the trip from Memphis, tickets were sold to passengers from Memphis to Nashville, but no further.

On the trip to Atlanta, tickets were sold from Nashville to Atlanta and to all intermediate points, including Chattanooga, and intermediate points within the State of Tennessee.

On the nights these cars left Nashville for Memphis and left Atlanta for Nashville, a car left Memphis for Nashville, and another left Nashville for Atlanta, selling tickets as above set out, from

Memphis to Nashville and intermediate points, and no further; and from Atlanta and intermediate points to Nashville and no further.

The car coming from Memphis to Nashville, went on the trip to Atlanta before making a return trip to Memphis; and the car making the trip from Atlanta to Nashville went on the trip the following night to *to* Memphis before making a return trip to Atlanta. The same cars were not used continuously in this service, but were changed from time to time by plaintiff, but at all times there were four cars of plaintiff performing this service, as above described.

During the year 1887, the East Tennessee, Virginia & Georgia Railroad Company ran two sleepers of its own, doing a busi-
26 ness between Knoxville and Chattanooga, Tennessee.

(*b.*) In the years 1889, 1890, 1891 and 1892, and 1893, the plaintiff has operated sleeping cars between Nashville and Memphis, selling tickets, and carrying passengers from Nashville to Memphis, and no further, on continuous trips, and from Memphis to Nashville, and no further, on continuous trips, and has operated sleeping cars between Atlanta, Georgia, and Nashville, Tennessee, on which it has carried some passengers from Chattanooga and intermediate points, within the State of Tennessee, to Nashville and no further, on continuous trips, all as set out in paragraph first of this stipulation.

During this time, the cars have been changed, from time, to time, at the will of the company, and alternate trips have been made to Memphis and to Atlanta by the respective cars before returning to the initial point.

(*c.*) From 1887 to the present time, on the lines of the Nashville, Chattanooga and St. Louis railway, and of the Louisville and Nashville railroad and of the East Tennessee and Virginia and Georgia railway, now the Southern railway, the Newport News, and Mississippi Valley railroad, the Illinois Central railroad, the Cincinnati Southern railway, and on all other railways within the State, whereon sleeping cars are operated, plaintiff has, upon its sleepers for compensation taken up and carried, and put down, within the State, passengers. Such cars have all been operated under contracts between plaintiff and the several railroad companies the same as the contract attached to the deposition of R. Dean, so far as the issues in these causes are concerned.

Fourth. Plaintiff has, during 1887 to the present time, had agents in Nashville, Chattanooga and Memphis, charged with the duties stated in the deposition of R. Dean stipulated to be read in these causes.

Fifth. This stipulation is not to affect another stipulation herein providing that the deposition of R. Dean and others may be read in these causes.

WM. L. GRANBERY,
Attorney for Plaintiff.
VERTREES AND VERTREES,
Attorneys for Defe-dant.

Filed April 29, 1901.

H. M. DOAK, *Clerk.*

27 The following stipulation and Exhibit "B" was filed, viz:

In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866. Law.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the *Comptroller of the* State of Tenn. } No. 2867. Law.

and

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903. Law.

It is hereby stipulated that the following is a true copy of Exhibit "B" referred to in the depositions of Dean and Bird, in evidence in this cause.

WM. BURRY,
For Plaintiff.
JNO. J. VERTREES,
For Defendant.

EXHIBIT "B."

This indenture made this eleventh day of April, A. D. 1872, between the Nashville and Chattanooga Railroad Company, the party of the first part, and the Pullman Southern Car Company, of the second part:

Whereas the party of the second part is now engaged in the business of manufacturing railway cars known as drawing-room and sleeping cars, under certain patents belonging to them, and of hiring the same to railway companies under written contracts for a term of years, to be used and employed on and over the lines of the road of said railway companies receiving therefor income and revenue by the sale to passengers of berths, seats and accommodations therein;

And whereas the said first party is desirous of availing itself of the use, on and over its lines of road, of the cars constructed under the sleeping and drawing-room car patents, now the property of the second party; also of connections by means of said cars with other lines of railway whereon said cars are now operated by said second party; now this contract witnesseth:

First. That the said party of the second part, in consideration of the covenants and agreements of the party of the first part, hereinafter mentioned, to be by them kept and performed, hereby agrees with the said party of the first part, that they will furnish drawing-room cars and sleeping cars, to be used by said party of the
28 first part for *for* the transportation of passengers, sufficient to meet the requirements of travel over their line of railroad

and on and over all lines of railroad which they now control or may hereafter control by ownership, lease or otherwise, the said cars to be satisfactory to the general superintendent of the said first party.

Second. The said party of the second part hereby agrees that it will keep the carpets and upholstery and bedding of each of the said cars in good order and repair and improve and renew the same, when necessary, at its own expense, except repairs and renewals made necessary by accident or casualty, it being understood that the said party of the first part shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this contract.

Third. The said party of the second part hereby agrees at their own cost and expense to furnish one or more employees, as may be needful, *a* upon each of said cars, whose duties it shall be to collect fares for the accommodations furnished in said cars and generally to wait upon passengers in said cars and provide for their comfort.

Fourth. The said party of the first part hereby agrees that *that* the general officers of the said second party and the employees named in article third of this agreement shall be entitled to free passage over the lines of the first party when they are on duty for the said second party.

Fifth. The party of the second part hereby agrees that the general officers of the first party shall be entitled to free passes in any of the cars furnished by said second party under this agreement.

Sixth. It is hereby mutually agreed that the said employees of the second party, named in article third of this contract, shall be governed by and subject to the rules and regulations of the said first party, which are or may be adopted from time to time, for the government of their own employees, and, in the event of any liability arising against said first party for personal injury, death, or otherwise, of any employee of the said second party, it is hereby distinctly agreed that the said first party shall be liable only to the same extent they would be if the person injured was an employee in fact of said first party, and for all liability in excess shall be indemnified and paid by said second party.

Seventh. The party of the first part, in consideration of the use of the aforesaid cars, hereby agrees to haul the same on the
29 passenger trains on their own line of road and on all roads which they now control or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they, by virtue of contracts or running arrangements with other roads, have the right to use such cars in such manner as will best accommodate passengers desiring the use of said cars.

And the said party of the first part shall, at their own expense furnish fuel for the cars and material for the lights, shall wash and cleanse said cars, and shall also keep said cars in good running order and repair, including renewals of worn-out parts, and all things appertaining to said cars, necessary to keep them in first-class condition, except such as are provided for in article second of this agreement.

Eighth. The party of the first part agrees to furnish to said sec-

ond party, without charge, at convenient points, room and conveniences for airing and storing bedding.

Ninth. The said party of the first part further agrees that the said party of the second part shall, be entitled to collect from each and every person occupying said cars such sums for said occupancy as may be usual on competing lines furnishing equal accommodations and that such rules and regulations shall be mutually agreed upon as will favor the renting of seats and couches in said cars.

Tenth. The party of the first part hereby agrees to permit the party of the second part to place the tickets for seats and couches for sale in such of the railway ticket offices as may be desired by the second party and such service shall be performed by and as a part of the general duties of the ticket agents and without charge to the party of the second part; proceeds of such sales to be at the risk of said second party.

Eleventh. The party of the first part hereby agrees that said second party shall have the exclusive right for a term of fifteen years from the date hereof to furnish for the use of said first party drawing-room cars or parlor cars and sleeping cars, including reclining-chair cars on all the passenger trains of said first party over their entire line of railroad and on all roads which they control or may hereafter control by ownership, lease or otherwise, and also on all passenger trains on which they may, by virtue of contracts or running arrangements with other roads have the right to use such cars, and that they will not contract with any other parties to run said class of cars on and over said lines of road during said period of fifteen years.

Twelfth. The said party of the second part, for the consid-
30 eration aforesaid, hereby guaranties said first party against all damages of whatever kind, which may be by said party of the first part incurred in consequence of any infringement of the patent rights in the construction and use of any os said cars which may be used by said second party upon the lines of said first party under this agreement, it being the meaning and intent of this article that said second party shall secure said first party against all manner of expendirure which may be incurred by said first party in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars, and that they will pay off and discharge all judgments obtained at any time against said first party on account of such infringements.

Thirteenth. It is mutually agreed between the parties hereto that in case either of said parties shall at any time hereafter fail to keep and perform any of the covenants herein contained to be by them respectively kept and performed, then, and in that case, after written notice shall have been given to the defaulting party hereto of the default complained of, if the said defaulting party shall refuse or neglect to make good, keep and perform such unful/filled covenants and conditions of this agreement within a reasonable time after such notice the other party shall be at liberty to declare this contract ended and no longer in force.

Fourteenth. It is mutually agreed between the parties hereto that all equipments that may be put upon the road of the first party under

this agreement shall be represented in stock in amount at par value exactly equal to *to* the cost of said equipment, such stock to be either the Pullman Southern Car Company's stock, issued by that company, or to be stock of a *a* new company to be organized by the parties hereto under the name of the Nashville and Chattanooga Car Company.

It is further agreed that said first party shall have the right and option to determine which of the two above-mentioned ways shall be followed—that is, whether, for the equipment to be put upon its road under this agreement, the stock of the Pullman Southern Car Company shall be issued or the stock of a new company, to be organized as above designated; but it is also agreed that such option and right of determination shall be exercised by the first party, if at all, and communicated to the second party in writing within twelve months from the date hereof. In the event of the said first
31 party either failing or neglecting to inform the second party in writing of its conclusions in the premises within the time specified above it is understood between the parties hereto that stock for said equipment shall be issued by the Pullman Southern Car Company.

It is further agreed that each party to this agreement shall be entitled to take, upon paying therefor at the lowest price at which such stock shall have been issued by the party of the second part, one-half of the stock representing the equipment that may be placed upon said first party's road under this agreement.

It is understood and agreed between the parties hereto that the sleeping cars now on the line of the first party, named, respectively, Memphis, Nashville, Virginia, Decatur, Fairview, and Winetka, are hereby accepted and are to be put in first-class condition by the respective parties under the provisions of this contract.

It is agreed that the acceptance of the cars Memphis, Nashville, Virginia and Decatur, as hereinabove recited, is for the period of seven years and six months, or a less time; provided that, in the judgment of the president of the party of the first part, the business shall sooner require better equipment, in which case, the party of the second part hereby agrees to furnish first-class cars in lieu of the cars hereinabove mentioned whenever the said first party shall make requisition for the same and agrees to guaranty the second party gross earnings for each of said cars to be so furnished of three hundred dollars per month.

In witness whereof the party of the first part has caused the corporate seal to be attached hereto by the president and secretary and the party of the second part hath caused its corporate seal to be attached hereto in like manner, attested by its president and secretary.

Dates the day- and years first written above.

[L. S.] NASHVILLE & CHATTANOOGA R. R. CO.,
By E. W. COLE, *President.*

[L. S.] THE PULLMAN SOUTHERN CAR CO.,
By GEORGE M. PULLMAN, *President.*

Attest: S. M. LEMONT, *Secretary.*

EXHIBIT "B"—Continued.

Whereas the Nashville and Chattanooga and St. Louis railway and the Pullman Southern Car Company heretofore, to wit, on the eleventh day of April, 1872, entered into a contract in writing herein and hereafter referred to;

And whereas the said named parties have agreed upon certain changes in said contract, and, in consideration of a settlement
32 growing out of said contract, the terms of which settlement have been fully complied with by both parties, have made the following agreement:

Now, this contract of agreement made and entered into this first day of January, 1879, between the said Nashville, Chattanooga and St. Louis railway, of the first part, and the Pullman Southern Car Company, of the second part, witnesseth:

First. That the Pullman Southern Car Company hereby agrees to furnish the party of the first part the sleeping cars, Fairview, Winetka, and Etowah, the same having been selected and accepted by the party of the first part as being now in good order and condition and equal to the demands of travel on the railroad of the first party and from this date the said Pullman Southern Car Company will maintain said cars in good order and condition at its own expense, so far as ordinary wear is concerned, except as hereinafter excepted and provided for.

Second. In consideration of the above and foregoing obligation, on the part of the Pullman Southern Car Company, the said Nashville, Chattanooga and St. Louis railway hereby agrees, monthly and at the end of each month, to pay said Pullman Southern Car Company three cents per mile for each car run by it on its lines of road, and further agrees and obligates itself to be liable for all damages to any or either of said cars so named or to such other cars as the increase of travel may require to be furnished under this and the original contract referred to, or cars placed in lieu of said cars while shopped on its road during the existence of this contract, except such damages resulting from defective heating apparatus or lighting apparatus or *tl* glass or to globes or to heating and lighting apparatus caused by the employees of the *O*ullman Southern Car Company.

Third. The said Nashville, Chattanooga and St. Louis railway hereby agrees to *to* supply at its own expense all the material necessary for lighting and heating said cars and also to *to* furnish and apply all lubricating material for the journals of said cars and to supply ice and water in sufficient quantities for the use of passengers occupying said cars and shall also wash and cleanse said cars as the same may be required.

Fourth. That Nashville, Chattanooga and St. Louis railway hereby agrees to permit the Pullman Southern Car Company to place its tickets for seats or berths on sale in the ticket offices of the *the* said railway, without charge to the Pullman Southern Car Com-

pany and permit the said Pullman Southern Car Company
33 to collect from each and every person occupying said cars for such occupancy such sum for the same as is usual on competing lines furnishing equal accommodations.

Fifth. The Pullman Southern Car Company agrees hereby that the general officers of the said Nashville, Chattanooga and St. Louis railway shall be entitled to free passes in said cars furnished and to be furnished as aforesaid by the Pullman Southern Car Company under this contract.

Sixth. The said Nashville, Chattanooga and St. Louis railway hereby agrees that the general officers of the Pullman Southern Car Company shall pass free over its said lines of railroad.

Seventh. It is agreed by the parties of the first and second parts hereto that *that* the contract now existing and herein and hereinbefore referred to between them shall be so far changed as that the sleeping cars furnished and to be furnished as herein provided for shall be placed on a mileage basis, to commence from the first of January, 1879, and that said party of the first part shall pay to the party of the second part at the end of each month during the continuance of this contract three cents per mile for each car run over its lines of railroad; this contract to be in full force as if herein reteated for the balance of the unexpired term of the contract entered into between the parties on the eleventh day of April, 1872, or until the eleventh day of April, 1887.

Eighth. It is agreed by the parties hereto that should the party of the second part during the continuance of this contract reduce its mileage contracts with other railroads less than three cents a mile, the benefit of such reduction shall avail to that extent to the party of the first part.

Ninth. It is further agreed that if the air-brake hose is broken from other causes than the effect of wear it shall be replaced by the party of the first part; otherwise by the party of the second part.

Tenth. It is agreed and understood that this contract does not annul the contract entered into on the eleventh day of April, 1872, between the said parties but it is supplemental thereto and changes the same only so far as the same is specifically expressed. All other parts of the original contract are operative.

Signed, sealed and delivered by the legal representatives of the said companies hereto and who have caused to be affixed the corporate seals of their companies respectively hereunto.

For THE NASHVILLE, CHATTANOOGA RAILWAY,
34 J. W. THOMAS, *General Superintendent.*

Attest: R. C. B. VANSFORD, *Sec'y.*

THE PULLMAN SOUTHERN CAR COMPANY.
GEO. M. PULLMAN, *President.*

Attest: A. H. WEINSHIEMER, *Sec'y.*

EXHIBIT "B"—Continued.

Subject: Contract with N., C. & St. L. R. R.

Pullman's Palace Car Company, superintendent's office.

CINCINNATI, *April* 23*d*, 1887.

T. H. Wickes, Esq., general superintendent, Chicago, Illinois.

DEAR SIR: I have to advise you that I have made an arrangement with Col. J. W. Thomas, president and general manager N. C. & St. L. R. R., that until a new contract with his company is agreed to, we will operate the line of sleeping cars over his road under the terms of the old contract, which expired on the eleventh instant.

Very respectfully, JAMES MARTIN,
Superintendent.

35 The following statement as to remission of part of sum sued for of tax of 1887, was filed, viz:

In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866. Law.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867. Law.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903. Law.

We have examined the memorandum from Judge Clark to the clerk concerning the operation of sleeping cars between Memphis, Nashville and Atlanta an- asking that counsel file additional suggestions in regard thereto.

The memorandum speaks of two cars operated between Nashville and Memphis during 1887 and 1888 and asks, what, if any, change was made in the succeeding years. The memorandum also quotes in full the second paragraph of the stipulation.

In that second paragraph mention is made of cars between Nashville, Memphis and Atlanta, but the paragraph states that the cars were operated between those different points as set out in paragraph first of this stipulation.

The first paragraph of the stipulation shows just how the cars were operated. They were operated on a circuit extending from Memphis to Atlanta and return. We consider it immaterial which city is the initial point of the round trip. Each car travelled the circuit, returning to the place whence it started. No weight is attached by counsel for the plaintiff to where the car started on its trip. The

main fact relied on is that each car had its round trip extending from Memphis to Atlanta and return.

Taking, therefore, the first paragraph in connection with the second paragraph, it appears from the stipulation that during all the years from 1887 to 1893, inclusive, cars were operated as above described and our position is that no tax could be levied on account of these cars at any — during any of the years.

Notwithstanding, however, that the stipulation is in the
36 form indicated, there was some discussion between the different parties and their solicitors as to whether there was not during about three years in 1887, two cars operated wholly within the State of Tennessee that never passed beyond the State.

At the same time, (about 1893 or 1894,), there was some discussion with a committee of the legislature as to a new tax act concerning sleeping cars. Without in any way waiving our position that the cars were all operated interstate and without conceding that two cars were, at any time, during 1887 operated locally in the State, and, without conceding that that fact would make any difference in the law (as such local operation might be simply as an incident to the main operation of sleeping cars) it was agreed between the different parties discussing the matter that, in the suit affecting the taxes of 1887, plaintiff would remit or not ask for one thousand dollars, being one year's tax on two cars, together with a proper proportion of interest thereon.

We submit, therefore, that this matter of remitting the one thousand dollars and interest was a matter of compromise only and does not affect the positions taken by counsel or the application of law to the general case.

We insist, as we have always done, that all of these cars at all times ran interstate and that as a matter of strict law, upon the record made, we would be entitled to recover the full amount claimed in all the suits.

As a matter of compromise, however, we have agreed not to ask judgment for the one thousand dollars and interest referred to. We do not think that that agreement affects the law in the case or presents any question to the court for determination. The only way in which it can affect the court is simply that by agreement of parties, plaintiff waives twelve hundred and thirty-four dollars of the amount claimed in suit No. 2867.

WM. BURRY,
W. L. GRANBERY,
For Plaintiff.

I object to the word "compromise" in the above. Understanding it to mean that the plaintiff, without waiving any rights as to the remainder, concedes that its claim should be remitted $1,234.00 in case No. 2867, I sign the above.

JOHN J. VERTREES,
Attorney for Defendant.

37 The following stipulation was filed, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller, etc.

Nos. 2866, 2867, and 2903, Pending in the Circuit Court of the United States at Nashville, Tennessee.

It is hereby stipulated that upon the hearing of these causes, which are to be heard together by consent, there shall be considered in evidence two receipts, signed by J. W. Allen, of which copies are hereto attached, one dated April 23d, 1892 and one dated August 28th, 1891, and also a letter of J. W. Allen, comptroller, dated August 24, 1891, which is attached to and forms part of said receipt dated August 28, 1891; and also the deposition of Hewitt Craik, J. W. Thomas, W. L. Danley, W. W. Knox, M. J. C. Wrenne, Richmond Dean, and J. F. Bird, which are hereto attached.

WM. BURRY,
WM. L. GRANBERY,
For Plaintiff.
JOHN J. VERTREES,
For Defendant.

The following is the copy of the letter referred to in the foregoing stipulation, viz:

NASHVILLE, TENNESSEE, *August* 24, 1891.

Messrs. Marks & Marks, city.

DEAR SIRS: Yours requesting statement of taxes due the State from Pullman's Palace Car Company to August 28th, 1891, to hand, and I herewith submit statement, *w* showing same, together with interest, etc.

2 cars, Nashville and Memphis, 1897	$1000.00
Interest to date	264.16
Same for 1888	1000.00
Interest to date	204.16
April 8th, 1889 to April 8th, 1890, one year	3000.00
Interest	428.50
April 8th, 1890 to April 8th, 1891	3000.00
Interest	248.50
April 8th, 1891 to April 8th, 1892	3000.00
Interest to date	68.50
Two cars Nashville and Chattanooga, 1887	1000.00
Interest to date	264.16
Same for 1898	1000.00
Interest	204.16
One other car equivalent, on business done on all interstate cars, 1887	500.00
Interest	132.08

Same for 1888	500.00
Interest	102.08
Total	$15,916.30

Very respectfully, W. J. ALLEN, *Comptroller.*

38 The following is the receipt for taxes, referred to, viz:

Pullman's Palace Car Company to J. W. Allen, Dr.

Address: Comptroller of the State of Tennessee, Nashville, Tennessee.

1891.		Amount.
Aug. 24	To amount of taxes required by decision of U. S. Supreme [Court]* for the years shown in annexed statement to be paid to the State of Tennessee. The taxes are paid under protest	$15,916.30
	Approved August 24, 1891. W. T. RANKIN, *Assistant General Counsel.*	
	See also other receipts this day given.	

Examined and found correct.
(Signature) —— ——.

Received from Pullman's Palace Car Company fifteen thousand nine hundred and sixteen, and $\frac{30}{100}$ dollars, in full of the above.
Aug. 28, 1891.

J. W. ALLEN,
Comptroller.

[* Word in brackets erased in copy.]

The following other receipt was filed, viz:

Pullman's Palace Car Company to J. W. Allen, comptroller of the State of Tennessee, Dr.

Address: Nashville, Tennessee.

1892.		Amount.
	For State license tax from April 8th, 1892, to April 8, 1893, required from sleeping-car companies under the law of the State of Tennessee approved April 8, 1889, as follows: Each company doing business in this State, for one or more passengers taken up at one point in this State and delivered at another point in this State and transported wholly within this State, per annum, $3,000.00	$3,000.00
	The above tax is paid under protest.	

Examined and found corroct.
(Signature) J. W. ALLEN.

Received from Pullman's Palace Car Company, three thousand dollars in full for the above.
Nashville, May 3d, 1892.

J. W. ALLEN,
Comptroller.

The following deposition was filed, viz:

HEWITT CRAIK, being first called and sworn, deposed as follows:

Q. 1. State your residence and occupation?
Answer. Residence, Nashville; occupation, Pullman-car conductor.
Q. 2. Are you engaged on the line of sleepers running be-
39 tween Nashville and Memphis, Tennessee? If so, how long have you been so engaged?
Answer. There is no line running between Nashville and Memphis. The line is between Memphis and Atlanta and No. 525 running by Nashville.
Q. 3. Please state the time your cars make—that is the time of -our departure and arrival at Nashville, Memphis and Atlanta?
Answer. We leave Memphis at 9.50 p. m., reach Nashville at 7 a. m. next morning, lie in Nashville all day, leave at 8.15 p. m. for Atlanta, reaching there at 6.32 a. m. the following morning, reaching Nashville at 5.10 a. m. next morning, lie there all day, leaving at 7.35 p. m., arriving in Memphis at 5.15 the following morning.
Q. 4. Was this schedule in force during the year 1889 and did

you operate sleeping cars on this schedule during any portion of that year?

Answer. No sir.

Q. 5. Did you, at any time during the year 1889, receive one or more passengers on your car at a point within the State of Tennessee and transport them to another point in this State, they being transported -holly within the limits of this State?

Answer. Yes.

HEWITT CRAIK.

Sworn to and subscribed before me this the 21st day of April, 1890.

E. R. CAMPBELL,
U. S. Dist. Clerk.

The following deposition was filed, viz:

In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller, etc.

Deposition of J. W. Thomas, witness for the defendant in the above cause, taken upon notice, on the 22nd day of October, at the office of Champion, Head and Brown, Cole building, Nashville, Tennessee, in the presence of S. A. Champion, attorney for defendant; no one present for the plaintiff.

The said witness, being duly sworn, deposed as follows:

Int. 1. Please state what connection you have with the Nashville, Chattanooga and St. Louis railway and how long you have filled that position?

Ans. Am president and general manager. Have been president five years and general manager nine years.

Int. 2. How many cars does the complainant run over your line and under what contract?

Ans. Four sleepers and two parlor cars. We pay three
40 cents per mile*a* for the sleepers and two and a half cents per mile for the parlor cars.

Int. 3. If you know, name the cars, that run between Nashville and Memphis.

Ans. Do not remember the names of the cars.

Int. 4. State if it is not the custom of the cars that make the run between Nashville and Memphis to come from Louisville or Atlanta, arriving in Nashville in the morning and remain here until about seven o'clock in the evening and then continue their trip to Memphis.

Ans. The parlor cars are between Nashville and Atlanta, leaving Nashville 7.30 a. m. and Atlanta 6.30 p. m., leave Atlanta 8 a. m., arrive at Nashville at 7 p. m. Sleepers reach Nashville at 5 a. m.,

lie over until 7 p. m. and reach Memphis about 5 a. m. Returning, leave Memphis 10 p. m., arrive at Nashville 7 a. m., lie over until 8 p. m., reach Atlanta 6 a. m.

Int. 5. Please state if tickets are ever sold for Atlanta or intermediate points for points beyond Nashville to be used upon sleepers arriving at Nashville in the morning.

Ans. Don't know.

Int. 6. Do the sleeping cars leaving Nashville in the evening ever go to points beyond Memphis?

Ans. Very seldom, if ever.

Int. 7. Do the sleeping cars reaching here from Memphis in the morning invariably go to Atlanta in the evening?

Ans. As a general rule they do. There may be occasional exceptions.

Int. 8. Are certain specific cars assigned to the service on your road or does the complainant exercise its own convenience and make frequent changes?

Ans. Four sleepers are assigned to our road and they are not changed, except for repairs or in case of accidents.

Int. 9. How long has the custom above described prevailed, and state if, until recently, two cars or more did not do the entire service between Nashville and Memphis and not go elsewhere?

Ans. I think so; but I do not know when the change was made.

Int. 10. From whose office could we get that information?

Ans. The records of the movements of the cars are kept in the superintendent's office.

Int. 11. State if you do not know that this change was made for the purpose of avoiding the privilege tax.

Objected to by plaintiff.

41 Ans. I think so, but do not know positively.

Int. 12. How many cars were used between Nashville and Memphis before the change was made?

Ans. Two.

Int. 13. The parlor cars running between Memphis and Nashville invariably lie over at Nashville and Memphis during the night, do they not? Or was not this the custom before the parlor car was discontinued — Nashville and Memphis?

Ans. No parlor car line between Nashville and Memphis for some months past. When the line was run, the cars laid over at night at Nashville and Memphis.

Int. 14. State if they did not run alone between Nashville and Memphis and when was the line discontinued?

Ans. Do not know when the line was discontinued. Records of the superintendent's office. Two cars ran exclusively between Nashville and Memphis.

Int. 15. Is it not true that the sleepers arriving in Nashville in the morning from Atlanta and Memphis could make close connection instead of lying over all day?

Ans. Could do so if the railroads were willing to bear the expense of hauling them on day trains which we are not.

And further deponent saith not.

J. W. THOMAS.

Plaintiff's counsel objects to all of Mr. Thomas' testimony which relates to parlor cars.

The foregoing deposition was taken before me as stated in the caption and reduced *the* writing by me. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties and that I sealed *them* up and delivered them to the clerk of the United States circuit court, without being out of my possession or altered after it was taken.

Given under my hand and seal this the 22nd day of October, 1889.

EDWIN A. PRICE,
Commissioner and Notary Public.

[SEAL.]

Commissioner's Costs.

Taking deposition, 805 words	$1.60
Subpœna	.50
Certificate	.15
	$2.25

42 The following depositions were filed, viz:

In the U. S. Circuit Court.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller, etc.

Depositions of W. L. Danley, W. W. Knox, and M. J. C. Wrenne, witnesses for the defendant in the above-styled cause, taken upon notice upon the 23d and 29th days of October, 1889, at the office of Champion, Head and Brown, Cole building, Nashville, Tennessee, in the presence of attorneys for both parties.

Said witnesses, being of lawful age, were first duly sworn, and deposed as follows:

W. L. DANLEY, of competent age, being duly sworn, deposed as follows:

Quest. 1. Please state what positions you occupy and how long you have been so engaged.

Ans. I am general passenger and ticket agent of the Nashville, Chattanooga and St. Louis railway, since September, 1868.

Quest. 2. How many sleeping and parlor cars have been used by your company since and during 1886?

Ans. That is a matter of record in the transportation department, and I could not say.

Quest. 3. Assuming that four Pullman sleeping cars ran over your road, please state when they arrive in Nashville and when — take their departure?

Ans. They usually arrive here in the morning between, say, five and seven and one-half o'clock and leave between seven and eight-fifteen at night.

Quest. 4. Why are these cars detained at Nashville during the day?

Ans. They are detained here, because we run no sleeping cars over our lines in the daytime and it is also necessary to clean-e them which they do here.

Quest. 5. Please state if it was not the system of the company, until recently, to run two cars between Nashville and Memphis, and the cars assigned to this line did not go elsewhere? And, if a change has been made, why was that done?

Ans. During part of the time, I think that they had two cars assigned to Nashville—Nashville and Memphis line. I don't know about the change.

Quest. 5. Who sells the tickets of the complainant over your line?

Ans. By W. W. Knox, ticket agent, Union depot, and A. H. Robinson, ticket agent at the Maxwell house.

43 Quest. 6. Is it not true that the change under which these cars, running exclusively between Nashville and Memphis, were discontinued — for the purpose of avoiding the payment of the privilege tax assessed by the legislature?

Ans. All changes which have been made — at the instance of the Pullman Company and they have never assigned any reason for the changes to me.

Quest. 7. State, as nearly as you can, about what the gross earnings received by the Pullman Company from local traffic would amount to for the year?

Ans. I have very little idea what their gross earnings are.

And further deponent saith not.

W. I. DANLEY.

Counsel for plaintiff objects to all of Mr. Danley's testimony which relates to parlor cars and also all his testimony about movement of cars, as he does not appear to speak from his own knowledge of them.

Witness W. W. Knox, aged 45 years, being duly sworn, deposed as follows:

Int. 1. What position do you occupy and how long have you been thus employed?

Ans. Ticket agent at the Union depot in Nashville since February, 1884.

Int. 2. Do you, by yourself, or through others, sell tickets for the Pullman Palace Car Company? If so, under what sort of contract with the plaintiff?

Ans. I am their agent by instructions from the management of the railway company.

Int. 3. What compensation, directly, or indirectly, does the railroad company get for this service?

Ans. I do not know.

Int. 4. State if the tickets sold are ever sold on the sleeper that goes to Memphis at night to points beyond Memphis.

Ans. No, sir.

Int. 5. Why not?

Ans. The sleeper runs only to Memphis.

Int. 6. Does the same sleeper return to Nashville the next night? If so, are tickets ever sold from that point to points beyond Nashville?

Ans. I do not know.

Int. 7. How many sleepers run between Memphis and Nashville?

44 Ans. One from Nashville to Memphis every night and one arriving at Nashville from Memphis every morning.

Int. 8. Please give the names of the sleepers assigned to the Nashville, Chattanooga and St. Louis railway?

Ans. I do not know.

Int. 9. During what period were certain cars used exclusively between Nashville and Memphis?

Ans. Well, I can't tell, because I don't know to what line the cars were assigned.

Int. 10. Is it not true that, until recently, two cars belonging to Pullman's Palace Car Company, were run exclusively between Nashville and Memphis and no other cars were used for that purpose, except when these were withdrawn for repairs or in case of accident?

Ans. I have understood that such was the case, but do not know of my own knowledge. I keep no records of any kind, of the movements of sleeping cars.

Int. 11. If such was the case, when, according to the best of your information, was this custom discontinued?

Ans. I can't say, of my own knowledge, that it is discontinued, because I know nothing about it.

Int. 12. State, as near as you can, the amount derived from the sale of sleeping-car tickets sold at your office, annually, to be used between Nashville and Memphis?

Ans. I think between two and three thousand dollars.

Int. 13. The amount between Nashville and Chattanooga?

Ans. Not over one hundred dollars a year.

Int. 14. That is because the sleeper goes to Atlanta, is it not?

Ans. Yes, sir.

Int. 15. How many cars are used by the Nashville, Chattanooga and St. Louis railway and between what points do they run?

Ans. Two used between Nashville and Atlanta.

Int. 16. How long have these cars been discontinued, between Nashville and Memphis?

Ans. I do not know.

And further this deponent saith not.

W. W. KNOX.

Counsel for plaintiff objects to all of Mr. Knox's testimony which relates to parlor cars and to all statements made by him concerning matters not within his own knowledge.

45 Witness M. J. C. WRENNE, aged forty-two years, being duly sworn, deposed as follows:

Int. 1. How and where are you engaged and how long have you been engaged in that capacity?

Ans. Superintendent of the Nashville, Chattanooga and St. Louis railway and have been so engaged since 1880.

Int. 2. What are your duties?

Ans. Have charge of the transportation department.

Int. 3. How many Pullman sleeping cars and parlor cars are assigned to your road?

Ans. Four sleepers and two parlor cars.

Int. 4. How long have these cars been used by your road?

Ans. The cars we are using now, we have had, possibly two years, or more; we may not have had them so long. I do not remember when we got the parlor cars.

Int. 5. How many cars run between Nashville and Memphis?

Ans. It takes two cars to fill the line between Nashville and Memphis.

Int. 6. State if it is true that, until recently, two cars ran exclusively between Nashville and Memphis; and, if so, when was this custom commenced and when discontinued?

Ans. For the last 16 or 18 months, more or less, two cars were running between Memphis and Nashville, unless replaced by other cars, when these cars were in shop. This was so until about the first of September, when the cars began to alternate trips between Memphis and Atlanta.

Int. 7. State if these cars, while they were thus engaged, were not the only sleepers used in that service, except temporarily, in case of accident, or when withdrawn for repairs?

Ans. These four cars in question came to us as new cars, two of them, for a while, ran between Nashville and Atlanta and were transferred to the Memphis line, or the contrary.

Int. 8. Why were these changes which you mention in your last answer, made?

Ans. The changes were made by the Pullman people to get the cars in line to suit themselves.

Int. 9. Was there any reason for it known to you?

Ans. The cars came at different periods and the two newest ones were put in the preferred line.

46 Int. 10. Is it not true that the two cars, or some other two cars, belonging to the plaintiff, were used exclusively between Nashville and Memphis during the years, 1885, 1886, 1887, and 1889? If not, please state, from your books, just what portion of this period the custom covered.

Ans. Will examine my books and attach my answer as an exhibit to this deposition.

Int. 11. Please explain the difference in the use of the parlor and sleeping cars?

Ans. The sleeping car is fitted up with beds and the parlor car has only chairs in it. The parlor cars are used on the day trains and the sleepers on the night trains.

Int. 12. How long since you quit using the parlor cars between Nashville and Memphis?

Ans. About May 12th, 1889.

Int. 13. How many had been used before that time and for what length of time?

Ans. Two; for about a year.

Int. 14. Please examine your books and state the exact time and the dates?

Ans. I will do so.

N. B.—The further taking of this deposition was adjourned until 3 p. m. October 28, 1889.

EDWIN A. PRICE,
Commissioner.

The taking of the deposition of M. J. C. Wrenne, was resumed at 10.30 a. m. of October 29th.

Present: Wm. Burry, attorney for plaintiff, and J. M. Head for defendant.

Int. 15. How many sleeping cars are necessary to transact the business between Nashville and Memphis?

Ans. Ordinarily two cars are leaving Nashville and Memphis each night.

Int. 16. Was this number of sleeping cars used by your road between Nashville and Memphis during the years 1887 and 1888.

Ans. Yes, sir.

Int. 17. Were these cars furnished by the plaintiff, The Pullman's Palace Car Company?

Ans. Yes, sir.

Int. 18. Is it necessary for the convenience of the travelling public that the sleeping cars doing the business between
47 Nashville and Memphis, should, at any time, go outside of the State of Tennessee?

Ans. Not if the cars are in first-class running order.

Int. 19. Give the time that these cars left Nashville, these sleeping cars, left Nashville and Memphis, and when they arrived at each of these points, during the years 1887 and 1888.

Ans. The sleepers left Nashville between the hours of 7 and 8 p. m., arriving in Memphis between 4 and 6 a. m.; leaving Memphis between 9 and 11 p. m. and arriving in Nashville about 7 a. m.

Int. 20. At what time did these sleepers, arriving in Nashville and Memphis, respectively, during the morning, leave these points, during the years 1887 and 1888.

Ans. The following evening if to go back over the same line.

Int. 21. During the years 1887 and 1888, were the sleeping-car tickets ever sold from Nashville or Memphis or any intermediate — to a point beyond the limits of Tennessee?

Ans. I can't answer as to where the tickets are sold to.

Counsel for plaintiff objects to all of Mr. Wrenne's testimony which in any way relates to parlor cars.

Cross-interrogatories:

X Int. 1. In answer to interrogatory 16, you stated that two sleeping cars were run between Nashville and Memphis during 1887 and 1888. Did you mean that only two different sleeping cars were run between those points during that time?

Ans. No sir; I meant that two cars would fill the line and they were liable to be charged by the Pullman people and were often charged.

X Int. 2. Did your company sometimes, during that period, call upon plaintiff for extra sleeping cars to meet the emergencies or unusual demands of business?

Ans. Yes, sir; when business demanded extra sleepers were asked for and, if the Pullman Company had them, they were furnished.

X Int. 3. Please state by months the number of different sleeping cars operated by plaintiff over your railroad between Nashville and Memphis, during 1887–'8?

Ans. I find that 1887 in

January,	eight	different cars.
February,	nine,	" "
March,	ten,	" "
April	eighteen,	"
May,	eleven	

48

June,	eight	different cars.
July,	eleven,	" "
August,	thirteen,	" "
September,	eight,	" "
October,	fourteen,	" "
November,	nine,	" "
December,	nine,	" "

In 1888, in—

January,	ten	" "
February,	nine,	" "
March.	seven,	" "
April,	six,	" "
May,	eleven,	" "
June,	six,	" "
July,	four	" "
August,	five,	" "
September,	six,	" "
October,	two,	" "
November,	two,	" "
December,	four,	" "

X Int. 4. Please state how many different cars were so used in 1887.

Ans. I find that there were forty-one cars used in 1887.

X Int. 5. Please state the number so used in 1888.

Ans. Twenty-six.

X Int. 6. You spoke of cars being assigned to your road by the

Pullman Company. Do you mean by that the allotment of certain specific cars to your road, which the Pullman Company was not at liberty to change to suit the emergiencies of its business?

Ans. The cars belong to the Pullman Company and they can change them at any time they want to.

X Int. 7. Then by what you said in that regard you simply meant that the plaintiff was required to do a certain amount of sleeping-car service on your railroad, using good equipments therefor and that you — a certain number of cars, if run continuously, could do that service?

Ans. Yes, that is the idea.

X Int. 8. Does your road extend beyond this State and to what point?

Ans. The main line of the Nashville, Chattanooga and St. Louis railway runs from Chattanooga, Tennessee, to Hickman,
49 Kentucky, passing through portions of the States of Alabama and Georgia between Chattanooga and Nashville.

X Int. 9. Does not your road connect with the Louisville and Nashville railroad at McKenzie and Nashville and are not your trains run so as to make connection with the L. & N. trains at those points as a general thing?

Ans. Yes, our trains connect with the Louisville and Nashville trains at McKenzie and Nashville.

X Int. 10. During 1887–'8, were there any through Pullman sleeping cars running from Louisville over your road to points in Georgia or Florida?

Ans. We had a line of sleepers running from Louisville to Jacksonville, Florida, during the year 1887.

X Int. 11. Have the Pullman Company any shops in Tennessee, where they can do all necessary repairing to their cars?

Ans. I know of no shops in Tennessee.

X Int. 12. Are there any on your line of railroad?

Ans. No sir.

X Int. 13. The contract in evidence between your company and plaintiff, requires plaintiff to furnish your company all sleeping cars needed for operation on your road. Does your company, under that contract, require it to operate sleeping cars over that part of your road lying between Nashville and Memphis?

Ans. If the contract exists it is in the hands of the president and general manager and I am not conversant with its requirements. I understand that the Pullman Company are to furnish sleepers for our night trains between Nashville and Memphis, which they do at our request.

Redirect examination:

Int. 1. I will ask you, Mr. Wrenne, if the sleeping cars operated by your company between Nashville and Memphis could not be discontinued without in any way interfering with the use of sleepers upon the remainder of your line of road?

Ans. There is no connection whatever between the sleepers used between Nashville and Memphis and the other parts of the line.

Objected to as immaterial.

Int. 2. I understand you to say that the two sleeping cars were necessary for the transaction of business between Nashville and Memphis during the years 1887 and 1888?

Ans. Yes sir.

50 Recross-examination:

Int. 1. Does not the proper operation of your road call for the running of sleeping cars between Nashville and Memphis?

Ans. Yes sir; on night trains.

Int. 2. Did not the cars passing from Memphis during all or almost all of 1887 and 1888 run to Louisville, Kentucky, before returning to Memphis?

Ans. I don't know if they went to Louisville. They were cars in the Pullman service and might have been in the line leading to Chicago, St. Louis, Cincinnati, New Orleans, or Atlanta.

M. J. C. WRENNE.

The foregoing depositions were taken by me as stated in the caption and were reduced to writing by me and counsel in the cause. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties and that I delivered them to the clerk of the United States circuit court at Nashville, without being out of my possession or altered after they were taken.

EDWIN A. PRICE,
Commissioner.

All formalities as to caption and certificate are hereby waived.

CHAMPION & HEAD,
Attorneys for Defe-dant.
WM. BURRY,
Solicitor for Complainant.

Commissioner's Costs.

Taking depositions, 2662 words	$5.32
Certificate	.15
Subpœna	.50
	$5.97

51 The following depositions were filed for plaintiff, viz:

UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF ILLINOIS, } ss:
County of Cook, }

Be it remembered that, on this 12th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, I, K. G. Todd, a notary public, did call and cause to be and personally appear before me, at my office, at the four and -lace designated in the notice attached hereto as Exhibit A, in the city of Chicago,

Richmond Dean, and James F. Bird, to testify and the truth to say, on the part and behalf of the complainant in a certain civil cause or matter of controversy, now depending and undetermined in the circuit court of the United States for the middle district of Tennessee at Nashville, wherein Pullman's Palace Car Company is complainant and the comptroller of the State of Tennessee, formerly P. P. Pickard, now J. W. Allen, is defendant.

At the taking of said depositions I was attended by Wm. Burry, solicitor for complainant and by Mr. Head, solicitor for the defendant.

And the said RICHMOND DEAN, being about the age of twenty-nine years and having been first by me duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the matter of controversy aforesaid, was examined by Mr. Burry on behalf of complainant and he did thereupon depose, testify and say as follows, viz:

Mr. Dean was not mentioned in the notice attached as Exhibit A, but by agreement of counsel he was called in place of Mr. Garcelon, mentioned in the notice.

Int. 1. State your name, residence and occupation?

Ans. 1. Richmond Dean, Chicago, assistant to the general superintendent of Pullman's Palace Car Company.

Int. 2. Do you know the contract under which the Pullman Company is operating sleeping cars upon the lines of the Nashville, Chattanooga and St. Louis Railway Company?

Ans. 2. Yes, sir.

Int. 3. Will you please produce and give to the notary to be attached as Exhibit B, a copy of that contract?

Ans. 3. Yes, sir.

Int. 4. Do you know generally the terms of the contract for operating sleeping cars between the Pullman Company and the Louisville and Nashville Railroad Company?

52 Ans. 4. Yes, sir.

Int. 5. Do you know generally the terms of the other contracts under which the Pullman Company operates sleeping cars in Tennessee?

Ans. 5. I am conversant with the general terms of all the contracts.

Int. 6. Are they substantially similar to the Louisville and Nashville contract just referred to?

Ans. 6. They are all similar under which we are operating cars in Tennessee, in general terms.

Int. 7. The complainant has conductors and porters from time to time in Tennessee with its cars?

Ans. 7. Yes.

Int. 8. Has it any other agents or representatives in Tennessee?

Ans. 8. We have three: R. Donaldson, agent at Chattanooga; G. C. Chase, agent at Memphis; and George Zoeller, agent at Nashville.

Int. 9. State generally what the duties of those agents are.

Ans. 9. Their duties are confined to seeing that men are provided for the cars when they leave on their runs; that they are properly furnished with supplies, such as soap, towels, etc., necessary to the operation of the cars. They also superintend the cleaning of the cars, to see that they are kept in proper condition.

Int. 10. Do they have any general powers over the management of the company's cars?

Ans. 10. No. They have no authority delegated to them whatever. They act entirely under the direction of the division superintendent.

Int. 11. Where is he situated?

Ans. 11. In this case, the lines in Tennessee are under Superintendent Martin at Philadelphia.

Int. 12. Have these agents any power to make contracts, or arrange about the movements of the cars, except as they are directed in each case by some superintendent of the company?

Ans. 12. None whatever.

Int. 13. Have they any other duties than that of keeping the car in proper condition?

Ans. 13. No. None that I recall. Those are their principal duties.

Int. 14. I think you said that complainant is now operating its cars under the terms of the old contract, Exhibit B?

Ans. 14. Yes, under the old contract. The Nashville, Chat-
53 tanooga and St. Louis.

Cross-examination:

Cr. Int. 1. Could you give me the number of cars owned by your company?

Ans. 1. In the neighborhood of two thousand. I cannot say exactly.

Cr. Int. 2. Could you give me the average cost of these cars?

Ans. Objected to as immaterial.

Ans. 2. Well, that I could not give without consulting records. I am not conversant with the cost of all the cars we operate.

Cr. Int. 3. What is the average capacity of each of your cars for passengers?

Ans. 3. We figure, as a rule, in furnishing cars, that they would contain ten sections or twenty berths. The majority of them have more than that number, but, generally speaking, in furnishing a car, where we do not have the number designated, we furnish ten sections of twenty berths.

Cr. Int. 4. You state that the copy of contract and amendment which you have filed as Exhibit B of your answer, with the Nashville, Chattanooga and St. Louis Railway Company covers the years 1887, 1888, and 1889?

Ans. 4. Yes sir.

Cr. Int. 5. Does your company pay any compensation for the sale of its tickets by the railway company's agents who serve you?

Ans. 5. No sir; none whatever.

Cr. Int. 6. I believe each of your sleeping cars has a separate name?

Ans. 6. They are known either by name or number.

Cr. Int. 7. Could you give the names or numbers of the various cars operated in Tennessee during the years 1887 and 1888?

Ans. 7. No sir; I could not. The cars are interchanged. I could not give the numbers or names.

Cr. Int. 8. About how many were operated in and through the State during the years 1887 and 1888?

Ans. 8. The service of the lines was likely in the neighborhood of 75.

Cr. Int. 9. Could you give the names of the cars operated by the Nashville, Chattanooga and St. Louis Railway Company during the years 1887 and 1888?

Ans. 9. No. I don't recall them; but will refer to the books and state them as a part of this deposition.

54 Cr. Int. 10. Will you also give the run of each of these cars during that time?

Ans. 10. Yes we can give that also. The records from which answers to this question and the one before it can be best prepared are not kept in my office, but in the auditor's office; and Mr. Bird of the auditor's office has answered them. I have read his answers and believe them to be correct.

Cr. Int. 11. Do not the records of your office show the point from which and to which every passenger who uses your cars travels?

Ans. 11. The diagrams would show that; but I believe it is customary only to retain them for a certain time. They are not in our office and I could not speak distinctly on that subject.

Cr. Int. 12. Does your company issue stop-over or transfer tickets from one car to another?

Ans. 12. In some cases they issue what is called a transfer. If a car breaks down en route and another car is available to receive its passengers we transfer them. It is always for continuous trips.

Cr. Int. 13. Then your tickets are only for continuous trips.

Ans. 13. Yes sir.

Cr. Int. 14. Do the records of your office show a single instance where a ticket was purchased for a continuous trip from Nashville to Memphis or any intermediate point to a point outside of the State of Tennessee?

Ans. 14. *O* cannot say; we have nothing to do with the handling of checks.

J. F. Bird, witness of lawful age, being produced on behalf of complainant and being duly sworn to testify to the truth, the whole truth and nothing but the truth, deposes and says.

Int. 1. State your name, residence and occupation?

Ans. 1. James F. Bird, Chicago, auditor of receipts of the Pullman Company.

Int. 2. Are the diagrams and other reports of conductors showing the passengers carried on different cars of the Pullman Company returned into your office?

Ans. 2. They are.

Int. 3. Are the regular runs of cars returned into your office?

Ans. 3. The diagrams are.

Int. 4. Are you, generally speaking, conversant with the lines of the Pullman Company that run into or through Tennessee?

55 Ans. 4. In a general way, yes.

Int. 5. Can you state generally the *gross receipts of* the Pullman Company per year for the last three years from lines running into Tennessee?

Ans. 5. The amount would be in the neighborhood of $500,000.00 per year.

Int. 6. Please also give a like approximation of what amount of those total gross earnings are taken from passengers carried locally in Tennessee on any of those lines?

Ans. 6. Generally speaking, about $25,000 per year.

Int. 7. During the year 1897, were any cars run locally in Tennessee, that is, were any cars run between points and upon lines lying wholly in the State of Tennessee?

Ans. 7. I believe not.

Int. 8. Do the regular trips of all the Pullman cars in service on lines which lie partially within Tennessee take them also outside of the State?

Ans. They do.

Cross-examination:

Cr. Int. 1. Are you familiar with the name and run of the cars operated in Tennessee, running between Nashville and Memphis.

Ans. 1. By referring to records names could be given.

Cr. Int. 2. Will you, by reference to your records, give the names and run and time of the cars operated between Nashville and Memphis during the years 1887 and 1888?

Ans. 2. I will. By examination of the records of my office, I find that the following sleeping cars ran between Nashville and Memphis over the Nashville, Chattanooga and St. Louis railway during 1887 and 1888:

1887.	1888.
Names of cars.	Names of cars.
Angora.	Antilles.
Antilles.	139 Arctic.
Bolivar.	Biloxi.
Biloxi.	Bartholdi.
182 Conestoga.	Caledonia.
Caledonia.	182 Conestoga.
Carbondale.	Celtic.
Delta.	134 Capri.
255 Dayton.	Delta.
Elmore.	255 Dayton.
Escort.	Elmore.
178 Elkmont.	178 Elkmont.
Eureka.	Fairview.

Ephesus.
Galatin.
Glendale.
Guthrie.
Hiawatha.
India.
56 Java.
Kennesaw.
Louisville.
Lavaca.
Monticello.
Paoli.
Palmetto.
Pontotoc.
146 Saranac.
Siesta.
Tuscumbia.
Tacitus.
Talladega.
Tiara.
Westerly.
Winetka.
Woodland.
Garden City.
Guthrie.
Hermione.
Hispania.
Kalamazoo.
Louisville.
Lavaca.
Loretto.
Monticello.
Paoli.
Pharos.
Pncelet.
Serapis.
Winetka.

None of these cars were operated exclusively over the Nashville, Chattanooga an- St. Louis railway, during 1887 and 1888, but they were also operated over many other lines of railroad and in other States.

On their runs between Memphis and Nashville, these cars, in going from Memphis to Nashville, left Memphis in the evening and arrived in Nashville in the morning. In going from Nashville to Memphis, they left Nashville in the evening and arrived at Memphis in the morning. The many points other than Memphis and Nashville, to which these cars ran during 1887 and 1888, and the times of their arrival and departure, are not, as I understand the question, called for in this answer. Ascertaining them would take a very long time, covering so much territory and could not be done in a week. The cars that ran from Memphis to Nashville during all of 1887 and the greater part of 1888 were required to run on from Nashville to Louisville, returning to Memphis by the same route.

Cr. Int. 3. Are the conductors' berth checks that are issued to each pass-nger returned into your office?

Ans. 3. They are.

Cr. Int. 4. Do these checks not always show the point from which and to which every passenger using your cars travels?

Ans. 4. They do.

Cr. Int. 5. Have you those checks now in your custody or control?

Ans. 5. They are retained only a short time. None for the years 1887 and 1888 are now in existence.

Cr. Int. 6. Do the conductors' reports show the fact?

Ans. 6. They do.

Cr. Int. 7. Have you these reports on file for 1887 and 1888?

Ans. 7. Yes. A few may be missing, but generally speaking they are on file.

Cr. Int. 8. Do the records of your office show an instance where a passenger purchased a seat from Nashville to Memphis or
57 from Memphis to Nashville and -n the same continuous trip passed to a point outside of the State of Tennessee?

Ans. 8. I can only tell by reference to the records.

Cr. Int. 9. Will you examine your records and answer that question?

Ans. 9. I will. I have examined the records and been unable to find any.

Cr. Int. 10. I will ask you if the cars used by the Nashville, Chattanooga and St. Louis railway between Nashville and Memphis, do not make those points as one trip for 1887 and 1888?

Ans. 10. After examining the records, I find that during all of 1887 and the greater part of 1888, the cars leaving Memphis and going direct to Nashville were required to go to Louisville before returning to Memphis, their regular trip being from Memphis to Louisville and return. During the latter part of 1888 the different sleeping cars going from Memphis to Nashville usually returned the following night to Memphis, unless they were ordered away to some other point and some other car sent to Memphis in their place.

Cr. Int. 11. Could you tell how many different cars were used during the years 1887 and 1888 between Nashville and Memphis?

Ans. 11. By examining the records I find there were 36 in 1887 and 27 in 1888.

Cr. Int. 12. You state in your direct examination that the gross earnings of all cars operated in or through Tennessee amount to about $500,000 per annum. About how many cars would it require to perform that service?

Ans. 12. Generally speaking about 100.

Cr. Int. 13. You say in your direct examination that all cars used in the State of Tennessee pass to a point outside of the State of Tennessee in their regular trip. Please designate the point to which the cars running between Nashville and Memphis pass outside of the State of Tennessee.

Ans. 13. To the best of my memory one point is Louisville.

Cr. Int. 14. Was this running arrangement in force during the years 1887 and 188-.

Ans. 14. During all of 1887 and the greater part of 1888.

Cr. Int. 15. Will you give the time made by these cars between Louisville and Memphis in continuous trips, passing by Nashville.

Ans. 15. I shall be obliged to refer to the records and will then do so. The cars usually left Louisville in the evening, arriving in Nashville next morning and left there for Memphis that
58 evening, arriving in Memphis the following morning.

Cr. Int. 16. What do you mean by the run of a car?

Ans. 16. Its usual route.

Cr. Int. 17. What do you mean by a continuous trip?

Ans. 17. A trip in which there is no lay-over.

Cr. Int. 18. Do I understand you, then, to mean that the run of a car running between Louisville, via Nashville, and Memphis, makes a continuous trip?

Ans. 18. No- so; I do not think they do.

Cr. Int. 19. I will ask you further, if the line of railroad between Louisville and Nashville is not owned by the Louisville and Nashville Railroad Company, and that between Nashville and Memphis by the Nashville, Chattanooga and St. Louis Railway Company?

Ans. 19. I believe so.

Redirect examination:

Int. 1. You have been asked several questions about cars running between Nashville and Memphis in 1888. I will ask you about all other cars of complainant, operated in Tennessee, if any of them run solely between points within Tennessee, or if they run from without the State into it during that time?

Ans. 1. None whatever ran local. All were interstate.

Int. 2. Do cars of complainant always remain upon the same route?

Ans. 2. They do not.

Int. 3. Do cars run- between any two points such as Nashville, Tennessee, and Atlanta, Georgia, sometimes get changed off into other runs?

Ans. 3. They do.

Int. 4. Does this occur frequently?

Ans. 4. It does.

Int. 5. What governs such changes?

Ans. 5. The operating department can best answer that question. I presume for convenience of operating, or to meet demands of travel.

Int. 7. Is the operation of cars and keeping accounts and ascertaining them easier when they are operated in long lines or short ones for the same number of miles operated?

Ans. 7. In long lines.

59 This was all the evidence.

Upon this evidence the court made the following special finding of facts, viz:

In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

Special Finding of Facts.

These cases were tried before me by consent, without a jury, upon an agreed statement. I find therefrom the following to be the facts.

1. The defendant, J. W. Allen, was the comptroller of the treasury of the State of Tennessee and the proper officer to demand and receive the taxes which were paid to him, as hereinafter stated by the plaintiff, if the taxes were lawfully demandable by any one; and

2. The plaintiff was, and is, a sleeping car company, operating sleeping cars during the years from 1887 to 1893, inclusive, in Tennessee, in the manner and as hereinafter stated; and

3. It was operating such cars on railroads lying partly within and partly without the State of Tennessee, under contracts similar to that submitted to me in the agreement made by the Nashville and Chattanooga Railroad Company and the plaintiff, dated April 11th, 1872, and which I here refer to as a part hereof; and

4. These cars were operated under such contracts, during said years, as follows:

(*a.*) During the years 1887 and 1888, the plaintiff operated sleeping cars in the State of Tennessee as follows:

Each night a car left Nashville and went to Memphis, and on this car tickets were sold to passengers from Nashville to Memphis and not beyond. This car remained all day in Memphis, being cleaned there, and returned to Nashville the following night, going no further on a continuous trip. It remained in Nashville all day and was cleaned, and then, the following night, went from Nashville, Tennessee, via Chattanooga, to Atlanta, Georgia. It remained all day in Atlanta, was cleaned there, and then, the following night,

60 returned from Atlanta to Memphis.

On the trip from Memphis, tickets were sold from Nashville to Atlanta and to all intermediate points, including Chattanooga, and intermediate points within the State of Tennessee.

On the nights these cars left Nashville for Memphis and left Atlanta for Nashville, a car left Memphis for Nashville, and another left Nashville for Atlanta, selling tickets, as above set out, from Memphis to Nashville and intermediate points, and no further; and from Atlanta and intermediate points to Nashville and no further.

The car coming from Memphis to Nashville went on the trip to Atlanta before making a return trip to Memphis; and the car making the trip from Atlanta to Nashville went on the trip, the following night, to Memphis before making a return trip to Atlanta. The same cars were not used continuously in this service, but were changed, from time to time, by plaintiff, but, at all times, there were four cars of plaintiff performing this service, as above described.

During the year 1887, the East Tennessee, Virginia and Georgia Railroad Company ran two sleepers of its own, doing a business between Knoxville and Chattanooga, Tennessee.

(*b.*) In the years 1889, 1890, 1891, 1892, and 1893, the plaintiff has operated sleeping cars between Nashville and Memphis, selling tickets and carrying passengers from Nashville to Memphis and no further, on continuous trips, and from Memphis to Nashville, and no further, on continuous trips, and has operated sleeping cars between Atlanta, Georgia, and Nashville, Tennessee, on which it has carried some passengers from Chattanooga and intermediate points, within the State of Tennessee, to Nashville and no further, on continuous trips, all as set out in paragraph (*a*) of this finding.

During this time, the cars have been changed from time to time, at the will of the company, and alternate trips have been made to Memphis and to Atlanta, by the respective cars, before returning to the initial point.

(*c.*) From 1887, to the present time, on the lines of the Nashville, Chattanooga and St. Louis railway, and of the Louisville and Nashville railroad, and of the East Tennessee, Virginia and Georgia railway, now the Southern railway, the Newport News and Mississippi Valley railroad and the Illinois Central railroad, the Cincinnati Southern railway, and on all other railways within the State, whereon sleeping cars are operated, plaintiff has, upon its "sleepers" for compensation, taken up and carried, and put down, within the State,
61 passengers. Such cars have all been operated under contracts between plaintiff and the several railway companies the same as the contract attached to the deposition of R. Dean, so far as the issues in these causes are concerned.

(*d.*) Plaintiff has, from during 1887, to the present time, had agents in Nashville, Chattanooga, and Memphis, charged with the duties stated in the deposition of R. Dean, stipulated to be read in these causes

5. The sleeping cars were operated during a portion of the year 1887 between Nashville and Memphis, Tennessee, which during that time, though used constantly between said points, did not pass beyond the limits of Tennessee. It was agreed that, without either party waiving any right the plaintiff's claim in No. 2867 should be ab-ted $1234.00, and

6. The gross receipts of the plaintiff per year, from lines running into the State of Tennessee, was about five hundred thousand dollars per annum. The gross receipts from passengers "carried locally in Tennessee, on any of those lines" was about twenty-five thousand dollars per year, and

7. The cars actually used on all these lines during any and every year, more or less, during such year would number over one hundred.

8. The defendant, as comptroller aforesaid, demanded of the plaintiff payment of taxes under the revenue laws of the State of Tennessee for the years 1887, 1888, 1889, 1890, 1891, as follows:

Two cars, Nashville to Memphis, 1887	$1000.00
Interest to date	264.16
Same for 1888	1000.00
Interest to date	204.16
April 8, 1889, to April 8, 1890, one year	3000.00
Interest	428.50
April 8, 1890, to April 8, 1891	3000.00
Interest	248.50
April 8, 1891, to April 8, 1892	3000.00
Interest	68.50
Two cars Nashville & Chattanooga, 1887	1000.00
Interest	264.16
Same for 1888	1000.00
Interest	204.16
One other car equivalent, on business done on all interstate cars, 1887	500.00
Interest	132.08
Same for 1888	500.00
Interest	102.08
Total	$15916.30

62 Also for the year 1892 the sum of $3000.00, and

9. On the 28th day of August, 1891, the plaintiff paid to the defendant, as comptroller, the said sum of $15,916.30; and, on the third day, of May, 1892, it paid to him said other sum of $3,000.00. These sums were paid as taxes demanded by said comptroller, and paid under due and formal protest.

10. The plaintiffs brought these suits to recover the amounts paid, as follows:

Suit No. 2866, on the 22nd day of September, 1891, to recover $9,745.50, (a part of said sum of $15,916.30), said taxes and interest paid for certain years; and suit No. 2867, on the same day to recover the remainder of said sum of $15,916.30, taxes paid for certain other years; and suit No. 2903, within thirty days and on the — day of May, 1892, to recover said sum of $3,000.00, tax paid for the year 1892, or until April, 1893; and

11. That if the plaintiff is entitled to recover at all, it is entitled to recover said amounts sued for as above stated, less the sum of $1234.00, to be deducted from the claim made in case No. 2867; and accordingly,

Upon these facts, I direct judgments to be entered for the plaintiff, as of March 1st, 1902, as follows:

In case No. 2866 for	$15,888.40
In case No. 2867 for	6,036.27
In case No. 2903 for	4,768.50

For the reasons stated in the opinion this day filed.

C. D. CLARK, *Judge, etc.*

Filed March 10, 1902.

H. M. DOAK, *Clerk.*

And the court thereupon delivered the following opinion (in accordance with which the judgments were rendered), viz:

63 In the Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } Nos. 2866, 2867, 2903.

In these cau*d*es I find the facts to be as stated in the annexed finding of facts. I do not deem it necessary to do more than state in the briefest way possible my conclusions, as these will be readily understood by counsel interested and as the cases are of a character, that makes it certain the judgments will go up for review, this circumstance renders it less necessary that I should write out in full the method of reasoning upon the cases.

It is conceded by the defendant's eminent counsel that, if the acts of the General Assembly of the State must be construed as applying to interstate commerce, they are invalid. The contention on behalf of the defendant in this respect is that, while the revenue acts in question are very general and comprehensive in their terms, they are, nevertheless, susceptible of such interpretation as will make them apply alone to business done exclusively within the limits of Tennessee; and that, the acts as thus construed, are valid. When these cases are properly distinguished from others in their facts and limited accordingly, the only case which can be found supporting this view is that of Osborne *vs.* Florida, 164 U. S., 650; and this case is the one chiefly relied on by defendant's able counsel.

It will appear from what is thus said that the leading question involved here is that of the proper construction and application of the revenue statutes of the State. The language of the act of 1887, so far as it affects the question now considered, declares the privilege tax as follows:

"Sleeping car companies. Each company doing business in the State, on each car, per annum, $500,*000*.00."

The language of this statute is undistinguishable from the revenue act of 1887, section 6, except that the privilege tax imposed by the latter act was $50.00 per annum on every sleeping car, or coach, while the privilege tax under the act now in question is $500.00 on each car per annum. The act of 1887, section 6, was under consideration by Chancellor Cooper in 3 Tenn. Chancery, 587, and was construed as applying to interstate commerce and was held to be valid and the learned chancellor's judgment was affirmed upon ap

peal to the supreme court of the State, that court apparently
64 accepting not only his conclusions but the reasoning by which those conclusions were reached.

In Pickard *vs.* Pullman Southern Car Company, 117 U. S. 34, the Supreme Court of the United States, on writ of error to the circuit court of the United States for the middle district of Tennessee, reached a different conclusion and decided the question otherwise; and, in the closing paragraph of the opinion, said:

"The question involved in this case was before the court of chan-
"cery of Tennessee in Pullman Southern Car Company *vs.* Gaines,
"3 Tenn. Chancery, 587, on the same facts, as to the privilege tax
"for 1887. That court held (and it is stated that the supreme court
"of Tennessee, on appeal, affirmed its ruling), that this privilege tax,
"as to such of the cars as passed and repassed through the State, and
"did not abide in it, was not amenable to the objection that it inter-
"fered with interstate commerce. The view taken was that the
"property of the foreign corporation, used in Tennessee, could be
"taxed as property, or by an excise on its use; and that the tax
"in this case was not directly on the object of commerce or
"directly aimed at commerce. We have given to the views set
forth by the Tennessee chancery court the consideration due to the judgments of that tribunal, but are unable to concur in its conclu-
"sion."

It must therefore be regarded as a proper construction of these revenue acts, the language of which has just been quoted, that they do apply to interstate commerce, and this construction is the one adopted both by the State supreme court, in the Gaines case, following Chancellor Cooper, and by the Supreme Court of the United States in the Pickard case. The supreme court of the State decided that the act, construed as applicable to interstate commerce, was valid, while the Supreme Court of the United States held that the statute as thus construed was invalid, and it was only in regard to the validity of the statute that the views of the two courts were divergent.

While the act of 1887 is so general in its terms that it is manifestly applicable to cars engaged interstate, as well as those engaged in local or intrastate transportation, it is quite apparent that the question whether the act as applied to any local business limited to the State of Tennessee would be valid was not considered or passed upon by the other court and for the very sufficient reason that this phase of the question was not involved or presented.

If two of the sleeping cars of the plaintiff company were, in fact, operating on the local run between Nashville and Memphis, so that,
in fact, they were not engaged in interstate commerce, or in
65 making interstate runs or trips, the question was left open or untouched by these cases, whether or not the revenue act might not be valid in part, and invalid in part in its application to the actual conditions of the plaintiff company's business. This is so, because the obvious interpretation of the act of 1887, like that of 1877, is that it applied to all of the cars of the plaintiff company operating in Tennessee, whether engaged in intrastate or local business, or inter-

state commerce, and it could not be said that they applied to the one exclusively and not to the other. I think it is manifestly a sound rule that, if the plaintiff company had two cars engaged in local work, making trips between Nashville and Memphis and not going beyond the limits of the State, in making a complete run or trip, that the revenue act would be valid, as applied to such cars, and to that extent, and invalid only as applied to cars engaged in an interstate run, or in interstate business. It is conceded, or rather is not denied, that the plaintiff company, in fact, had two cars engaged on a local run between Nashville and Memphis, the trip beginning at Nashville and ending there, during a part of the year 1887. And I conclude from a study of paragraphs 1 and 2 of the written stipulation filed, together with the record of the case, that two cars were, in like manner, run during the year 1888, although counsel for the plaintiff contends that the facts were otherwise during the year 1888, and this contention is apparently conceded, or not denied by defendant's counsel.

It is not disclosed by the record that any change was made in the methods of the plaintiff's business during the year 1898, and no reason for any change in fact has been suggested in argument and probably none could be. It is quite evident that the situation, as a matter of fact, continued during the year 1888, just as it had during the year 1887, the business of both years being under a contract with the Nashville, Chattanooga and St. Louis railway, having its headquarters at Nashville, Tennessee. The fact that plaintiff company might undertake to call the trip one beginning at Memphis, or to formally declare the trip as beginning there, could not possibly change the fact that it did not begin there; but, on the contrary, that the initial or starting point was Nashville and that the trip from Nashville to Memphis and return ended at Nashville. The real substance of the thing cannot be sacrificed to a mere form or a mere formal declaration.

Under this view of the actual facts of the case and the precise method in which the plaintiff's cars run, my opinion is that
66 the revenue act of 1887 was valid as to the two cars of the plaintiff operating between Nashville and Memphis. I have no concern whether or not the privilege tax of $500.00 on a single car was excessive. That is a legislative question and if the plaintiff company did not choose to pay this tax it was under no obligation, as a matter of law, to do a local business in this State, or to run any cars exclusively between Nashville and Memphis. It could, therefore, easily avoid the tax by doing business in such method that the statute could not validly apply, as it was only necessary for it, in point of fact, and not merely in form, to adopt the method of *of* an interstate trip or run to avoid the application of the statute.

The act of 1887, so far as it applies to any cars beyond the two just mentioned, as doing a local business between Nashville and Memphis, was unconstitutional and invalid, and the plaintiff in the first case, with which I am dealing, No. 2867, is entitled to recover the amount paid under protest and now sued for, with interest from the time of payment, less a credit for the tax on two cars during the

years 1887 and 1888. The cost of the cause, of course, will follow the result and the actual amount recovered can be readily computed by counsel.

I now come to the acts of 1889 and 1891, under which the other taxes paid under protest and now sued for were collected. The revenue act of 1891 is identical with that of 1889, the language of which imposing the tax is as follows:

"Sleeping car companies. (In lieu of all other taxes, except ad "valorem tax.) Each company doing business in this State, for one "or more passengers taken up at one point in this State, and deliv- "ered at *at* another point in this State, and transported wholly within "this State, per annum $3,000.00."

Now, in regard to this statute, I will only say, by way of general observations, that the settled construction of the acts of 1877 and 1887 must be regarded as necessarily applicable to this act. Besides the course of construction adopted by the supreme court of the State and the Supreme Court of the United States, Judges Key and Jackson, upon full consideration, have construed this particular act as applicable to interstate commerce and adjudged it invalid and it will be admitted, I think, that I should accept that interpretation in the absence of a contrary exposition by the Supreme Court of the United States, or the circuit court of appeals for this circuit. I think it requires only a careful study and a reasonably close analysis
67 of the act *act* of 1889 to make it perfectly apparent that the act has no application to any local business in the sense in which it could validly apply at all. It will be noted that the privilege tax was not placed on each car, or upon the cars operated at all, but is a tax imposed on the company, the language being:

"Each company doing business in this State, for one or more passengers taken up at one point in this State, and delivered at another point in this State, and transported wholly within this State."

In view of the general situation of affairs, as then known to the legislature, it is clear that the purpose was to reach a company doing an interstate business and there is a manifest attempt to require it to pay a large privilege tax on the incidental business of taking up, while passing through the State, one or more passengers and transporting such passengers to another point within this State. To suppose that the General Assembly entertained the idea that taking up and putting down wholly within the State such passengers as it might secure for that limited transportation would justify so enormous a privilege tax as this, would be to impute to the General Assembly utter want of reason. Again, it is not, therefore, capable of separation, so as to say that any particular part of the tax may be applied to local business and the other part *of* to interstate business; and the statute does not adopt any method calculated to separate the two kinds of business. If the legislature designed to place so large a privilege tax as $3,000.00 on any local business done by taking or lodging one or more local passengers, wholly within the limits of the State, it manifested a willingness to do an injustice and to resort to oppression; but such a purpose as

this can never be imputed to the legislative body. On the contrary, it must be assumed that the legislature intended to act reasonably and justly.

If it had been the purpose of the legislature to impose this privilege tax on a local business and by reason of such business, as distinguished from general business, it is too plain for discussion, that it would have adopted language better calculated to express such a purpose and to give effect to the legislative intent.

On the contrary, the purpose is clearly disclosed to impose this privilege on each company and to avoid concern with the extent or amount of any particular kind of business.

If a through sleeping car should start on a trip from Chicago, Illinois, to Jacksonville, Florida, and each of the States through which it passes should impose a privilege tax of $3,000.00 on
68 the company for taking up and putting down a passenger in each State, it is too clear, looked at from any standpoint, that the company would be under the necessity of abandoning its business altogether and that there would be a direct and obvious interference with interstate commerce.

The statement in the act of the General Assembly that the privilege tax was imposed for transporting one or more passengers from one point to another wholly within the State, was, in view of the actual conditions present and the previous legislation and adjudications of the courts, manifestly an attempt, as Judge Key says, by mere formal declaration to avoid the objection of violating the Constitution.

In view of this, and other considerations, which I need not now refer to, I conclude that the revenue act of 1889 is unconstitutional and void. At the same time I regard the question as foreclosed by the settled interpretation of similar statutes adopted by the Supreme Court of the State and of the United States and particularly by the ruling of Judges Key and Jackson in regard to this very statute. I think their views should be accepted by me and followed, in the absence of a different ruling by the circuit court of appeals, the Supreme Court of the United States, or of the State of Tennessee, as to the proper construction of these acts; and I need not add that it is my duty to follow the Federal cases with regard to the validity or invalidity of the statutes, when construed as applicable to interstate commerce, which has been the interpretation put upon the statute by all of the courts thus far.

The case of Osborne *vs.* Florida is clearly distinguishable in its actual facts and conditions. The privilege tax in that case was on the local business done by an express company and this privilege tax was graded in amount, according to the size of the particular town or city in which the express company had an established office or agency and carried on its express business. In a city of large population, the privilege tax was larger than in a city or town of smaller population; and it is quite evident that the legislature of that State intended to make the amount of the privilege tax bear a relation to the local business done by the company. The legislature undertook to find out this relation or correspondence be-

tween the local business done and the tax by the size or population of the particular city and whether this was a successful method, or not, it nevertheless disclosed, upon the very face of the revenue act an i-tention only to tax the local business and to make the privilege tax on such local business correspond justly to the
69 amount of business actually done, as estimated by the population or size of the city where a local agency was established and it was not required to pay any privilege tax except in cities and towns where it established a local agency and this left the express company free to select such towns and cities as would afford a local business justifying an agency in view of the privilege tax imposed by the revenue act. It was under no compulsion, or necessity, to establish an agency and do an express business in any town or city whose population and the volume or amount of whose business did not justify the establishment of an agency there and the payment of the privilege tax, which was in proportion to the population of such city.

In the case at bar, there is, except as to the one or two local cars, during 1887 and 1888, no substantial ground whatever for saying that the privilege tax was based on any local business, or that it was in proportion to such local business, or that was or could be a burden on such local business only. On the contrary, it is quite plain that the burden necessarily fal-s on interstate commerce and that, in view of the then known conditions of the country, the legislature must be regarded as having intended not only the probable but the necessary consequences of its action.

And, in regard to the act of 1889, and the privilege taxes collected thereunder, it is evident that no local agency, local business, or local property was contemplated as a ground on which the privilege tax was imposed and the only reference whatever made to taking up and putting down a single passenger within the State was for the purpose of suggesting a ground of justification for the tax imposed. It was then well known, and is now well known, that the privilege tax of $3,000, on the company, placed a burden to that extent on interstate commerce; and that there was no local business which could bear such a burden, or upon which it could possibly fall. This is too plainly evident to be denied or to remain unacknowledged. The tax was imposed on the company and, if it be suggested that it is a charge or burden on the earnings of the company from local, as well as interstate commerce, this would not relieve the act of the objection made; and, moreover, the obvious answer would be that it was a burden on interstate commerce, as well as on any local business done; and the tax was not imposed in any proportion or relation to either business, but arbitrarily, upon the company and would, in the most favorable view to the defendant, operate as a burden upon both classes of business, in proportion to the amount of
70 each class of business, and, as a result, almost altogether upon interstate commerce.

Upon what is thus said, it is sufficient to announce that, in cases, 2866, and 2903, the plaintiff is entitled to recover the amount paid

under protest, with interest and costs, and judgment will go accordingly.

CLARK, *J.*

Filed November 29th, 1901.

H. M. DOAK, *Clerk.*

The defendant tenders this his bill of exceptions to the action of the court, in each of said cases, respectively, which is signed, sealed and ordered to be made part of the record.

C. D. CLARK, *Judge.*

71 The following stipulation was filed and entered of record, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

In these causes, it is stipulated that these three causes shall be heard together and a jury is expressly waived.

WM. L. GRANBERY,
Attorney for Plaintiff.
JOHN J. VERTREES,
Attorney for Defendant.

The following judgments were pronounced and entered in the respective causes, as of March 1st, 1902, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2966. Law.

On this day came on the above-entitled cause for hearing, and the parties having waived a jury in writing, the matter was submitted to the court, and, after hearing the testimony and argument of counsel, the court found the issues in favor of the plaintiff, and assessed the plaintiff's damage at the sum of nine thousand seven hundred and forty-five and $\frac{50}{100}$ dollars ($9,745.50) and the further sum of six thousand one hundred and forty-two and $\frac{90}{100}$ dollars, interest, making the total judgment $15,888.40 and the costs of this proceeding, for which let execution issue.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867. Law.

On this day, came on the above-entitled cause for hearing, and the parties having waived a jury in writing, the matter was submitted to the court, and, after hearing the testimony and argument of counsel, the court found the issues in favor of the plaintiff and assessed plaintiff's damage at the sum of three thousand seven hundred and two and $\frac{48}{100}$ ($3,702.48) dollars and the further sum
72 of two thousand three hundred and thirty-three ($2,333.79) dollars and seventy-nine cents interest, making the total judgment $6,036.27, and the costs of this proceeding, for which execution will issue.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903. Law.

On this day came on the above-entitled cause for hearing and the parties having waived a jury in writing, the matter was submitted to the court, and, after hearing the testimony and argument of counsel, the court found the issues in favor of the plaintiff and assessed plaintiff's damage at the sum of three thousand dollars ($3,000.00) and the further sum of one thousand seven hundred and sixty-eight and $\frac{50}{100}$ ($1,768.50) dollars interest, making the total judgment $4,768.50, and the costs of this proceeding, for which execution will issue.

73 PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

The defendant moved the court in each and every of these cases, respectively after the evidence was in, and before judgment, for judgment therein in his favor, which motion was refused, and to which action of the court the defendant excepted.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

The defendant moved the court in each and every of these causes for a new trial, but each and every of said motions was overruled; to which action of the court the defendant excepted.

74 The following is the memorandum from Judge Clark to the clerk, calling for certain data concerning the operation of cars, reference to which is made in statement of running of cars, pp. — to —, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
W. J. ALLEN, Controller of the State of Tennessee. } Nos. 2866, 2867, 2903.

The second paragraph in the stipulation reads as follows:

"In the years 1889, 1890, 1891, 1892, and 1893, the plaintiff has operated sleeping cars between Nashville and Memphis, selling tickets and carrying passengers from Nashville to Memphis, and no further, on continuous trips, and from Memphis to Nashville, and no further, on continuous trips, and has operated sleeping cars between Atlanta, Georgia, and Nashville, Tennessee, on which it has carried some passengers from Chattanooga and intermediate points, within the State of Tennessee, to Nashville and no further, on continuous trips, all set out in paragrap- *paragraph* 1st of this stipulation. During this time the cars have been changed from time to time, at the will of the company, and alternate trips have been made to Memphis and Atlanta, by the respective cars before returning to the initial point."

This paragraph does not determine definitely whether, during the years 1889, 1890, 1891, and 1892 and 1893, the plaintiff operated two cars between Nashville and Memphis, as was its custom during the years 1887 and 1888. An examination of the proof fails to show that any change in fact was made in the mode of running these cars during the years 1889, 1890, 1891, 1892, and 1893, from what it had been during the years 1887 and 1888, except possibly, the sleeping car company simply declared that its trip commenced at Memphis, instead of at Nashville, as theretofore. In other words, the proof fails to suggest that any change was made, except the mere change in name, and it does not appear, as I read the proof, that there was any change in the condition, the mode of running the cars, or in the contract between the Pullman Company and the Nashville, Chattanooga and St. Louis railway.

I desire a statement from counsel on both sides, or a brief, as they may choose, on this question of fact, if it is a disputed one between them. I mean the question of fact, whether there was, in reality, any change in the run of the cars after 1888 from what had existed before. If paragraph 2 of the stipulation was intended to
75 definitely settle this proposition of fact, then I desire to know how the fact is as thus agreed upon. If not, I wish to have pointed out to me, what change was in fact made, so that Memphis was to be regarded as the initial point, or headquarters, after the year 1888, instead of Nashville, which had, confessedly, been the initial or starting point, theretofore, for the trip both to Memphis and to Atlanta. Of course it would amount to no change for the company simply to say that its trip commenced at Memphis after that time, instead of to Nashville, as theretofore, unless there was some change in the condition of the service, or the mode of operation, which furnished good ground for saying that the trip was different from what it had theretofore been.

The clerk will please ascertain, at once, an expression from counsel on this point alone, and send it to me at once.

Furthermore, the plaintiff concedes that it is not entitled to judgment for the tax on two cars for the year 1887. Now, what is to distinguish the case in this respect from the year 1888 and for subsequent years, unless it appears as a fact that, for those subsequent years, the run or trips of the cars can be regarded as commencing at Memphis as the initial point and running from there to Atlanta, a continuous trip, instead of treating Nashville as the starting point and headquarters for the four cars engaged in service over the line of the Nashville, Chattanooga and St. Louis railway. I must repeat that this inquiry is now *is* about a question of fact, and not one of law, and it is a question that was scarcely alluded to in the argument, and was, I think, treated as settled by the stipulation, but the stipulation, in view of its language above *e* set out, is not sufficiently specific in this respect.

CLARK, *J.*

76 The following, petition for a *s* writ of error was filed, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
W. J. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
W. J. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
W. J. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

And now comes J. W. Allen, comptroller of the State of Tennessee, defendant in these cases, respectively, and says that, on or about the first day of March, 1902, this court entered a judgment in said

three cases above named, respectively, in favor of the plaintiff and against this defendant, as follows: In case No. 2867 for $6,036.27; in case No. 2866, *d* for $15,888.40; and in case No. 2903, for $4,768.50. And that in the said proceedings and the proceedings had prior thereunto in said causes certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of *from the assignment of* errors which is filed with this petition. Wherefore this defendant prays that writ of error may issue in this behalf to the circuit court of the United States for the middle district of Tennessee for the correction of errors so complained of and that a transcript of the record, proceedings and papers in said causes (which by consent were heard together) duly authenticated, may be sent to the Supreme Court of the United States.

G. W. PICKLE,
Attorney General of Tennessee.
J. M. DICKINSON,
JOHN J. VERTREES,
Attorneys.

Writ of error allowed:
HORACE H. LURTON,
Circuit Judge.

The following assignment of errors was filed, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

At Law.

Assignment of Errors.

77 The defendant in these actions, which by stipulation, were tried together, in connection with his petition for a writ of error, in each and every thereof, makes the following assignment of errors in each and every case, which he avers occurred upon the trial of said causes, viz:

The court erred:—

1. In overruling the motion of the defendant for a new trial.

2. In entering judgment in favor of the plaintiff and against the defendant.

3. In holding and adjudging that the taxes imposed by the State of Tennessee upon the plaintiff and demanded of it, and paid by it under protest, and which the suits were brought to recover, applied

to and unduly affected the interstate commerce in which the plaintiff was engaged and were, for that reason, illegal and invalid.

5. In not holding and adjudging that the said taxes did not unduly affect or impose unauthorized burdens upon the interstate commerce in which the plaintiff was engaged.

G. W. PICKLE,
Attorney General of Tennessee.
J. M. DICKINSON,
JOHN J. VERTREES,
Attorneys for Defendant.

The following writ of error was issued, viz:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the middle district of Tennessee, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court before you, or some of you, in a suit between Pullman's Palace Car Company, plaintiff, and J. W. Allen, comptroller of the State of Tennessee, being three causes consolidated upon the hearing, viz, Nos. 2866, 2867, and 2903, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validit- or wherein was drawn in question the construction of a clause in the Constitution,
or of a treaty, or statute of, or commission held under
78 the United States, and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said J. W. Allen, comptroller, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 20th day of March in the year of our Lord one thousand nine hundred and two.

[Seal of U. S. Circuit Court.]

H. M. DOAK,
Clerk of the Circuit Court of the United States for the Middle District of Tennessee.

Allowed by:—
HORACE H. LURTON,
Judge of the Circuit Court of the United States for the Middle District of Tennessee.

The following citation was issued, viz:

United States Supreme Court, United States of America.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

To Pullman's Palace Car Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court to be held in the city of Washington, D. C., on the 20th day of April, 1902, next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein J. W. Allen, comptroller of the State of Tennessee is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgments rendered against the plaintiff
79 in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of March, in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth year.

HORACE H. LURTON,
Circuit Judge.

Endorsed.

I acknowledge service of the within citation, this 20th day of March, 1902.

W. L. GRANBERY,
Attorney for Plaintiff.

The following bond for appeal was executed and filed, viz:—

Know all men by these presents, that we, J. W. Allen, comptroller of the State of Tennessee, as principal and John J. Vertrees, as surety, are held and firmly bound unto Pullman's Palace Car Company, in the full and just sum of five hundred dollars, to be paid the said Pullman's Palace Car Company, certain attorneys, executors, administrators, or assigns, of successors; to which payment,

to and unduly affected the interstate commerce in which the plaintiff was engaged and were, for that reason, illegal and invalid.

5. In not holding and adjudging that the said taxes did not unduly affect or impose unauthorized burdens upon the interstate commerce in which the plaintiff was engaged.

G. W. PICKLE,
Attorney General of Tennessee.
J. M. DICKINSON,
JOHN J. VERTREES,
Attorneys for Defendant.

The following writ of error was issued, viz:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the middle district of Tennessee, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court before you, or some of you, in a suit between Pullman's Palace Car Company, plaintiff, and J. W. Allen, comptroller of the State of Tennessee, being three causes consolidated upon the hearing, viz, Nos. 2866, 2867, and 2903, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validit- or wherein was drawn in question the construction of a clause in the Constitution,
or of a treaty, or statute of, or commission held under
78 the United States, and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said J. W. Allen, comptroller, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 20th day of March in the year of our Lord one thousand nine hundred and two.

[Seal of U. S. Circuit Court.]

H. M. DOAK,
Clerk of the Circuit Court of the United States for the Middle District of Tennessee.

Allowed by:—
HORACE H. LURTON,
Judge of the Circuit Court of the United States for the Middle District of Tennessee.

The following citation was issued, viz:

United States Supreme Court, United States of America.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

To Pullman's Palace Car Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court to be held in the city of Washington, D. C., on the 20th day of April, 1902, next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein J. W. Allen, comptroller of the State of Tennessee is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgments rendered against the plaintiff
79 in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of March, in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth year.

HORACE H. LURTON,
Circuit Judge.

Endorsed.

I acknowledge service of the within citation, this 20th day of March, 1902.

W. L. GRANBERY,
Attorney for Plaintiff.

The following bond for appeal was executed and filed, viz:—

Know all men by these presents, that we, J. W. Allen, comptroller of the State of Tennessee, as principal and John J. Vertrees, as surety, are held and firmly bound unto Pullman's Palace Car Company, in the full and just sum of five hundred dollars, to be paid the said Pullman's Palace Car Company, certain attorneys, executors, administrators, or assigns, of successors; to which payment,

well and truly to be made, we bind ourselves, our, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated, this 20th day of March, 1902.

Whereas, lately, at a circuit court of the United States for the middle district of Tennessee, in a suit depending in said court, between Pullman's Palace Car Company, plaintiff, and J. W. Allen, comptroller of the State of Tennessee, a judgment was rendered against the said J. W. Allen, comptroller, and the said J. W. Allen, comptroller, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit and a citation, directed to the said Pullman's Palace Car Company, citing and admonishing it to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date thereof.

Now, the consideration of the above obligation is such, that, if the said J. W. Allen, comptroller, shall prosecute to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

J. W. ALLEN, *Comptroller.* [SEAL.]
JOHN J. VERTREES, *Surety.* [SEAL.]

Sealed and delivered in presence of:
H. M. DOAK, *Clerk.*

Approved.
HORACE H. LURTON, *Judge.*

80 The following entry, allowing a writ of error was made, viz:

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2866.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2867.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2903.

In the above-styled causes, comes the defendant, J. W. Allen, comptroller, etc., and prays a writ of error to the Supreme Court of the United States, to correct the judgments herein, as appears from his petition for writ of error, filed herein, and assignment of errors filed therewith. Upon consideration thereof, said writ of error is allowed upon defendant's executing bond in the sum of five hundred dollars conditioned as provided by law.

I, H. M. Doak, clerk of the circuit court of the United States for the middle district of Tennessee, hereby certify that the foregoing is a full, complete and perfect transcript of the record in the above-styled causes, as the same is on file or of record in my office.

In witness whereof I have hereunto signed my name and affixed the seal of the court. Gone at my office in Nashville, State and district above set out, this the 24th day of March, A. D. 1902.

[Seal Circuit Court U. S., Middle District Tenn.]

H. M. DOAK,
Clerk United States Circuit Court for the Middle District of Tennessee.

Endorsed on cover: File No. 18,472. M. Tennessee C. C. U. S. Term No. 619. J. W. Allen, comptroller of the State of Tennessee, plaintiff in error, *vs.* Pullman's Palace Car Company. Filed April 3rd, 1902.